

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 28 1989

THURSTON FIRE & CASUALTY  
INSURANCE COMPANY,

Plaintiff,

vs.

CRAWFORD & COMPANY,

Defendant.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 87-C-849-B

O R D E R

This matter comes before the Court on the application for attorney's fees of Plaintiff Thurston Fire & Casualty Insurance Company ("Thurston Fire") for \$18,761.25. Thurston Fire was the prevailing party on an oral contract cause of action on October 27, 1988 when partial summary judgment was awarded. Thurston Fire was also the prevailing party on the remainder of the suit, a *quantum meruit* cause of action on November 23, 1988 when the jury rendered its verdict.

The application for attorney's fees is based on both an Oklahoma statute, 12 O.S. §936, and a Texas statute, Tex.Civ.Pract. Code Ann. §38.001 (Vernon), awarding attorney's fees. The Court grants the application for the following reasons.

Plaintiff's application was filed December 5, 1988. Under Local Rule 6(G), Defendant Crawford & Company had 15 days to file specific objections. The local rule specifically states that failure to object within this time frame is a waiver of the objections. Defendant failed to file objections timely. Under

Local Rule 6(G) objections were due December 20, 1988. Defendant's objections were not filed by December 20, 1988, but filed December 29, 1988. Any objections are deemed waived.

Further, Defendant does not challenge the reasonableness of the amount. The dispute centers on whether Oklahoma law<sup>1</sup> allows the award of attorney's fees to the prevailing party on a *quantum meruit* cause of action. Defendant concedes awarding attorney's fees is appropriate on a cause of action concerning the breach of an oral contract but contends they are not authorized on a cause of action for *quantum meruit*.

Oklahoma Statutes Tit. 12 §936 states:

"In any civil action to recover on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, or for labor or services, unless otherwise provided by law or the contract which is the subject of the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs."

Defendant contends this provision allows attorney's fees on actions based on a contract for labor or services but not on actions in *quantum meruit* for labor or services. Defendant cites no authority for this interpretation of the statute. The Oklahoma Supreme Court has held differently. In Russell v. Flannagan, 544


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<sup>1</sup> Defendant argues that under Toland v. Technicolor, 467 F.2d 1045 (10th Cir. 1972) Oklahoma law applies and the applicable statute is 12 O.S. §936.

P.2d 510, 512 (1975), the Court held that "the phrase 'or for labor or services' properly comes within the initial category of 'a civil action' not as appellant contends, the antecedent classification of a 'contract relating to ...'" Therefore the Court finds 12 O.S. §936 does allow the award of attorney's fees to the prevailing party on a *quantum meruit* cause of action based on labor or services.

The Court hereby awards attorney's fees to Plaintiff Thurston Fire and Casualty Insurance Company.

IT IS SO ORDERED this 28<sup>th</sup> day of Feb, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

<sup>1</sup> "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

told that it was not properly issued for the reason that the record and transcript had not been filed."

In its response to the Motion to Vacate, Appellee alleges that the notice of appeal was filed by Appellants on June 24, 1988 and they filed a Request for Trial Transcript on July 22, 1988, a copy of which is attached to the Response. This Request for Trial Transcript was designated by Appellant in the Designation of Record filed on August 19, 1988. Appellee has attached to its Response an affidavit of Roxton W. Spear, the court reporter to Judge Scott, Tulsa County District Judge, stating under oath that Appellants' counsel made a deposit toward the completion of the transcript, but Mr. Spear did not receive a Designation of Record. Appellee alleges that the court file contains all items designated by Appellants in their Designation of Record except the trial transcript.

In its Reply to Appellee's Response, Appellants' counsel alleges: 1) that he never received a letter or notice from the Bankruptcy Clerk that the transcript had been prepared, 2) that from the outset he tried to determine who reported the trial, 3) that he filed a written request for the transcript and a designation of record, and 4) that he eventually learned that Mr. Spears had prepared the transcript and paid Mr. Spears for that work. Appellants have attached to the Reply a second affidavit of Mr. Spears, stating under oath that: 1) he reported the trial before Judge Covey, 2) that he was notified orally that a transcript would be needed but never given a due date 3) that he

received partial payment for the transcript, 4) that he was unfamiliar with Bankruptcy Court procedures and because of a misunderstanding between Appellants' counsel and himself, the transcript was not completed, and 5) that he will need an additional thirty (30) days to complete it.


Bankruptcy Rule 8006 requires a party who includes a transcript as part of the record designated on appeal to arrange for a transcript to be made:

If the record designated by any party includes a transcript of any proceeding or a part thereof, he shall immediately after filing the designation deliver to the reporter and file with the clerk of the bankruptcy court a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record.

It is clear to the court that Appellants' counsel did not fully comply with Rule 8006. This lack of compliance led to the failure of the Bankruptcy Court Clerk to transmit the complete record to the Clerk of the District Court under Bankruptcy Rule 8007, which states in part: "When the record is complete for purposes of appeal, the clerk of the bankruptcy court shall transmit it forthwith to the clerk of the district court..." (emphasis added). Rule 8007 goes on to say: "On receipt of the transmission the clerk of the district court ... shall enter the appeal in the docket and give notice promptly to all parties...." Rule 8009 requires the appellant to serve and file his brief within fifteen (15) days after entry of the appeal on the docket pursuant to Rule 8007.

The court finds that Appellants' Motion to Vacate Order of Dismissal should be and is granted under Rule 60(b) of the Federal Rules of Civil Procedure, as the pleadings and affidavits provide evidence of some mistake which occurred during the processing of the appeal and therefore the Appellants are justified in receiving relief from the operation of the dismissal. The transcript of the proceedings before Judge Covey has now been provided to the Bankruptcy Clerk, who has transmitted it to the Clerk of the District Court. The Clerk of the District Court is to enter the appeal in the docket and notify all parties so that the appeal may go forward.

Dated this 28 day of February, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOMMY JOE CURRAN; MARY ANN  
CURRAN; JUANITA NEELEY a/k/a  
JUANITA JONES; AAA PLUMBING  
COMPANY; STATE OF OKLAHOMA  
ex rel. DEPARTMENT OF PUBLIC  
WELFARE n/k/a DEPARTMENT OF  
HUMAN SERVICES; FIDELITY  
FINANCIAL SERVICES, INC.;  
COUNTY TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants,

REGINALD NEELEY,

Additional Party Defendant.

FILED

FEB 28 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-336-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27 day  
of February, 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Tulsa County, Oklahoma, and  
Board of County Commissioners, Tulsa County, Oklahoma, appear by  
Doris L. Fransein, Assistant District Attorney, Tulsa County,  
Oklahoma; that the Defendant, State of Oklahoma ex rel.  
Department of Public Welfare n/k/a Department of Human Services,  
appears by its attorney Oscar L. Jenkins; that the Defendant,  
Fidelity Financial Services, Inc., appears by its attorney Don E.



Gasaway; and the Defendants, Tommy Joe Curran, Mary Ann Curran, Juanita Neeley a/k/a Juanita Jones, and AAA Plumbing Company, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, AAA Plumbing Company, acknowledged receipt of Summons and Complaint on April 13, 1988; that the Defendant, Fidelity Financial Services, Inc., acknowledged receipt of Summons and Complaint on April 11, 1988 and acknowledged receipt of Summons and Amended Complaint on April 26, 1988; that the Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 11, 1988; and that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 8, 1988.

The Court further finds that the Defendants, Tommy Joe Curran and Mary Ann Curran, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning August 4, 1988, and continuing to September 8, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Tommy Joe Curran and Mary Ann Curran, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of

Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Tommy Joe Curran and Mary Ann Curran. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on April 25, 1988 and their Answers to Amended Petition herein on May 5, 1988; that Theodric B. Hendrix, Attorney for Defendant, Juanita Neeley a/k/a Juanita Jones, filed an Entry of Appearance herein on May 9, 1988 but has failed to answer and her default has therefore been

entered by the Clerk of this Court; that the Defendant, State of Oklahoma ex rel. Department of Public Welfare n/k/a Department of Human Services, filed its Answer and Cross-Complaint herein on April 27, 1988; that the Defendant, Fidelity Financial Services, Inc., filed its Answer and Cross-Complaint herein on May 2, 1988 and its Amended Answer and Cross-Complaint herein on May 18, 1988; and that the Defendants, Tommy Joe Curran, Mary Ann Curran, and AAA Plumbing Company, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-Six (36), Block Two (2), in Suburban Acres Addition, to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on February 15, 1967, the Defendants, Tommy Joe Curran and Mary Ann Curran, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$9,350.00, payable in monthly installments, with interest thereon at the rate of six percent (6%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Tommy Joe Curran and Mary Ann Curran, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated February 15, 1967, covering

the above-described property. Said mortgage was recorded on February 16, 1967, in Book 3797, Page 1858, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Tommy Joe Curran and Mary Ann Curran, conveyed the subject property to Defendant, Juanita Neeley a/k/a Juanita Jones, by a General Warranty Deed dated the 14th day of November, 1975, and recorded on November 21, 1975, in Book 4192 at Page 1101 in the records of Tulsa County, Oklahoma. Plaintiff did not release Defendants, Tommy Joe Curran and Mary Ann Curran, from their personal liability thereon.

The Court further finds that the Defendants, Tommy Joe Curran and Mary Ann Curran, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Tommy Joe Curran and Mary Ann Curran, are indebted to the Plaintiff in the principal sum of \$5,245.90, plus interest at the rate of 6 percent per annum from June 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$5.26 which became a lien on the property as of 1981 and 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

The Court further finds that the Defendants, Juanita Neeley a/k/a Juanita Jones and AAA Plumbing Company, are in default and have no right, title, or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Department of Public Welfare n/k/a Department of Human Services, has a lien on the subject property by virtue of an Affidavit of Acknowledgment of Indebtedness Claim dated April 25, 1977, and recorded in Book 4267 at Page 1423 in the records of Tulsa County, Oklahoma, in the amount of \$ 0.00, plus interest until paid and costs.

The Court further finds that the Defendant, Fidelity Financial Services, Inc., has a lien on the subject property by virtue of a mortgage dated February 5, 1988, and recorded on February 9, 1988, in Book 5079 at Page 1324, in the records of Tulsa County, Oklahoma. Said lien is in the amount of \$13,017.71, plus interest at the rate of 21 percent per annum from the first date of default until paid, an attorney's fee of \$1,952.66, and costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Tommy Joe Curran and Mary Ann Curran, in the principal sum of \$5,245.90, plus interest at the rate of 6 percent per annum from June 1, 1987 until judgment, plus interest thereafter at the

current legal rate of 9.32 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$5.26, for personal property taxes for the years 1981 and 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Department of Public Welfare n/k/a Department of Human Services, have and recover judgment in the amount of \$ 0.00, plus interest until paid and costs by virtue of an Affidavit of Acknowledgment of Indebtedness Claim dated April 25, 1977, and recorded in Book 4267 at Page 1423 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Fidelity Financial Services, Inc., have and recover judgment against Defendant, Juanita Neeley a/k/a Juanita Jones, in the amount of \$13,017.71, plus interest at the rate of 21 percent per annum from the first date of default until paid, an attorney's fee of \$1,952.66, and costs of this action, by virtue of a mortgage dated February 5, 1988, and recorded on February 9, 1988, in Book 5079 at Page 1324, in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Juanita Neeley a/k/a Juanita Jones, AAA Plumbing Company, and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$5.26, personal property taxes which are currently due and owing.

Fourth:


In payment of the Defendant, State of Oklahoma ex rel. Department of Public Welfare n/k/a Department of Human Services, in the amount of \$ 0.00 , plus interest until paid and costs of this action;

Fifth:

In payment of the Defendant, Fidelity Financial Services, Inc., in the amount of \$13,017.71, plus interest at the rate of 21 percent per annum from the first date of default until paid, an attorney's fee of \$1,952.66, and costs of this action.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

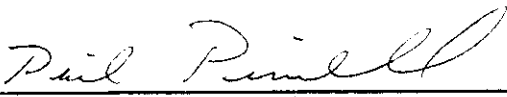
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


  
UNITED STATES DISTRICT JUDGE





APPROVED:

TONY M. GRAHAM  
United States Attorney

  
\_\_\_\_\_  
PHIL PINNELL, OBA #7169  
Assistant United States Attorney

  
\_\_\_\_\_  
CARL ROBINSON, OBA #10164  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

  
\_\_\_\_\_  
OSCAR L. JENKINS, OBA #4640  
Attorney for Defendant,  
State of Oklahoma ex rel.  
Department of Public Welfare  
n/k/a Department of Human Services

  
\_\_\_\_\_  
DON E. GASAWAY, OBA #3276  
Attorney for Defendant,  
Fidelity Financial Services, Inc.

James O. Ellison  
Judge

United States District Court  
Northern District of Oklahoma  
333 West Fourth, Room 4-500  
United States Courthouse  
Tulsa, Oklahoma 74103

(918) 581-7981  
(FCS) 736-7981

February 28, 1989

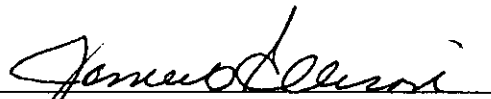
TO: COUNSEL/PARTIES OF RECORD

RE: CASE NO. 88-C-987-E - THE G. C.  
BROACH COMPANY V. GADOT  
PETROCHEMICAL INDUSTRIES LTD.

This is to advise you that Judge James O. Ellison entered the following Minute Order this date in the above case:

Plaintiff's Motion for Default Judgment is granted. Plaintiff is directed to file a proposed form of journal entry of judgment outlining the issues of jurisdiction and arbitration within ten (10) days.

Very truly yours,

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

☐ Counsel Notified

☒

Clerk to Notify

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLA MAE MILLER; FIDELITY  
FINANCIAL SERVICES, INC.;  
COUNTY TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants.

F I L E D

FEB 28 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 88-C-1440-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28<sup>th</sup> day  
of Feb, 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by Carl Robinson, Assistant District Attorney,  
Tulsa County, Oklahoma; and the Defendants, Ola Mae Miller and  
Fidelity Financial Services, Inc., appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Ola Mae Miller,  
acknowledged receipt of Summons and Complaint on December 20,  
1988; that Defendant, Fidelity Financial Services, Inc.,  
acknowledged receipt of Summons and Complaint on October 20,  
1988; that Defendant, County Treasurer, Tulsa County, Oklahoma,  
acknowledged receipt of Summons and Complaint on October 20,

1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 19, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on November 3, 1988; and that the Defendants, Ola Mae Miller and Fidelity Financial Services, Inc., have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-nine (29), Block Five (5), in SHARON HEIGHTS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on September 26, 1974, the Defendant, Ola Mae Miller, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, her mortgage note in the amount of \$10,250.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Ola Mae Miller, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated September 26, 1974, covering the above-described

property. Said mortgage was recorded on September 27, 1974, in Book 4138, Page 1401, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Ola Mae Miller, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Ola Mae Miller, is indebted to the Plaintiff in the principal sum of \$8,729.34, plus interest at the rate of 9.5 percent per annum from April 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, Fidelity Financial Services, Inc., is in default and has no right, title, or interest in the subject real property.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$4.00 which became a lien on the property as of 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Ola Mae Miller, in the principal sum of \$8,729.34, plus interest at the rate of 9.5 percent per annum from April 1, 1987 until

judgment, plus interest thereafter at the current legal rate of 9 3/4 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$4.00 for personal property taxes for the year of 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Fidelity Financial Services, Inc. and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendant, County  
Treasurer, Tulsa County, Oklahoma, in the  
amount of \$4.00, personal property taxes  
which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the  
Clerk of the Court to await further Order of the Court.

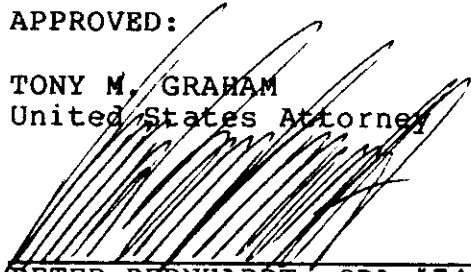
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from  
and after the sale of the above-described real property, under  
and by virtue of this judgment and decree, all of the Defendants  
and all persons claiming under them since the filing of the  
Complaint, be and they are forever barred and foreclosed of any  
right, title, interest or claim in or to the subject real  
property or any part thereof.

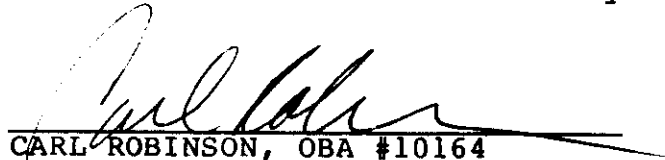
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT, OBA #741  
Assistant United States Attorney

  
CARL ROBINSON, OBA #10164  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 22 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

BETTY SUE MIZER,  
Plaintiff.

**vs.**

No. 88-C-142-B

HANOVER INSURANCE COMPANY,  
Defendant.

In accord with the Order filed this date sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant Hanover Insurance Company and against the Plaintiff Betty Sue Mizer. The Plaintiff shall take nothing on her claim. Costs are assessed against the Plaintiff and the parties are to pay their own respective attorney's fees.

DATED this 28th day of February, 1989.

Thomas R. Lee

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



FILED  
FEB 28 1989

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

DON SIDES,

Plaintiff,

vs.

No. 85-C-620-B

OTIS R. BOWEN, M.D.,  
SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Defendant.

O R D E R

This matter comes before the Court on Defendant Secretary of Health and Human Services' objection to the Findings and Recommendations of United States Magistrate John Leo Wagner. The Magistrate's report was filed November 7, 1988. Claimant contends that the filing of the objection on November 23, 1988 was not timely.<sup>1</sup> The Court has reviewed the merits of the objection and finds it should be overruled.

Claimant was born May 10, 1931 and has one and one-half years of college. In 1953 claimant had an automobile accident resulting in severe injuries that still affect him. Claimant has not worked since August 1982 due to gait disturbance and seizure disorder. Dr. Edwards reported in December 1986 that Claimant "continues to have seizures despite appropriate medication" and is "unable to

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<sup>1</sup> Local Rule 32(D) requires objections to be filed within 10 days of service of the Findings, unless a magistrate or judge prescribes a different time. Fed.R.Civ.P. 6(a), however, excludes intermediate Saturdays, Sundays and legal holidays such as Veterans' Day which was on November 11, 1988. Further, Fed.R.Civ.P. 6(e) allows additional time for use of the mail.

work from both an orthopedic as well as neurologic problem." (R. 391).

The Administrative Law Judge (ALJ) found that Claimant did not qualify for social security benefits. The Appeals Council modified the decision of the ALJ and found that Claimant "retains the capacity to perform his past relevant work as a security guard which was light in nature." The Magistrate found that the decision should be reversed and Claimant found disabled and entitled to disability insurance. Specifically, the Magistrate found and this Court agrees that the testimony of vocational expert Dr. Cullen Mancuso was ignored. The vocational expert clearly testified that Claimant could not perform any work including his past work as a security guard because of his nonexertional impairments. This Court agrees there was not substantial evidence before the ALJ and Appeals Council to support the decision to deny disability benefits.

Specifically, the Defendant objects to the Magistrate's finding that since "Plaintiff only worked as a security guard from April to May of 1982," the work is not "'past relevant work' which is defined as of sufficient duration to enable the worker to learn to do the job. 20 C.F.R. §416.955(a)." Defendant contends the record reflects the security guard work Claimant did was unskilled and could be learned on the job within 30 days. Further, Defendant argues, Claimant was a licensed security guard. This Court finds that even if this work is deemed "past relevant work" the record clearly establishes that Claimant can no longer perform the work.

Therefore, the objection is overruled.

Next Defendant contends that the services of a vocational expert are not necessary when Claimant can perform past relevant work. This argument will not be addressed as the Court finds there is not substantial evidence to support a finding Claimant can perform past work.

Therefore, the objection to the Findings and Recommendations of the Magistrate is overruled. This case is remanded to the Secretary for calculation and award of benefits.

IT IS SO ORDERED this 28 day of Feb, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 28 1989

Jack C. Silver, Clerk

U. S. DISTRICT COURT

No. 88-C-142-B

BETTY SUE MIZER, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HANOVER INSURANCE COMPANY, )  
 )  
 )  
Defendant. )

ORDER

This matter comes before the Court upon Defendant Hanover Insurance Company's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56.

Plaintiff Betty Sue Mizer was first employed by Hanover Insurance Company ("Hanover") in June 1976 as an underwriter in the personal lines department and was subsequently promoted to senior underwriter. Plaintiff's responsibilities included reviewing insurance applications submitted by independent agents to see whether the applicant was a good risk. After an annual review in June 1983, Plaintiff's supervisor, Patti Barlow, discussed with Plaintiff areas of possible improvement. In May 1984, Barlow again was dissatisfied with Plaintiff's work and Plaintiff did not receive a salary increase based upon that evaluation. In May 1985, Ron Deep, Personal Lines Manager, evaluated Plaintiff's performance and discussed his perceived shortcomings with her work. Plaintiff received a 5% pay raise after the evaluation, although she thought she deserved a larger raise. Deep discussed with Plaintiff his

concerns about the quality of her work and the improvements she needed to make. Deep Depo., pp. 63-68, and Exhibit 2 attached thereto.

A quality review in December 1985 showed Plaintiff committed 55% of all the errors for the relevant time period.<sup>1</sup> Plaintiff was subsequently placed on a 90-day probationary status, effective January 2, 1986. On February 5, 1986, Plaintiff met with Ron Deep who offered to carry Plaintiff on the payroll and provide full benefits through May 31, 1986, if she would voluntarily resign. On February 7, 1986, Plaintiff submitted her letter of resignation and signed an agreement outlining Hanover's financial obligations to her. Mizer Depo., p. 100. Because February 7, 1986 fell in the middle of a pay period, Mizer asked if she could work until the end of the current pay period. Deep agreed and allowed Mizer to work until February 14, 1986. Mizer Depo., pp. 180-181.

Plaintiff initiated this action on February 10, 1988, for age discrimination pursuant to the Age Discrimination in Employment Act of 1967 ("ADEA"). Defendant filed its motion for summary judgment alleging Plaintiff's claim is barred by the statute of limitations. The ADEA provides that lawsuits alleging a violation of the ADEA must be filed within two years of the discriminatory action, unless that action was willful, and then the suit must be filed within three years. 29 U.S.C. §§ 626(e), 255(a). Defendant asserts the statute of limitations began to run on February 7, 1986, the time

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<sup>1</sup>Plaintiff argues the error rate is excessive; however, this Order renders the issue moot.

of the alleged discriminatory action, rather than February 14, 1986, the last day of Plaintiff's active employment. In Delaware State College v. Ricks, 449 U.S. 250 (1980), the Supreme Court stated:

"Mere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination. United Air Lines, Inc. v. Evans, 431 U.S. 553, 558 (1977)."

Ricks at 257. The Supreme Court went on to conclude that the limitations period commences to run when the decision is made and the party notified. Id. at 259; Chardon v. Fernandez, 454 U.S. 6 (1981) (per curium), *aff'd*, 462 U.S. 650 (1982). In this instance, Plaintiff was first notified of Defendant's intentions on February 5th, and was given until February 7th to accept Deep's offer. Plaintiff submitted her resignation on the 7th, thereby accepting Deep's offer and entitling her to full pay and benefits through May 31, 1986. Therefore, the limitations period began to run on February 7, 1986. Plaintiff asserts that, although the document is dated February 7, 1986, she may not have received the financial papers until Monday February 10, 1986.

"When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some meta-physical doubt as to the material facts. ... In the language of the Rule, the non-moving party must come forward with 'specific facts showing that there is a genuine issue for trial.' Fed.R.Civ.P. 56(e). ... Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'"

Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586-587 (1986) (citations omitted). In this instance, Plaintiff's resignation is dated February 7th, and the financial agreement signed by Plaintiff is dated February 7th. The only indication the agreement may not have been signed on February 7th is Plaintiff's "metaphysical doubt" as to whether she really received the document on that date. Mizer Depo., p. 180. Therefore, the Court concludes the limitations period commenced on February 7, 1986.<sup>2</sup>

Because the suit was filed more than two years after the alleged discriminatory action, Plaintiff also asserts Defendant's conduct was willful, thereby triggering the ADEA's three year statute of limitations. 29 U.S.C. §255(a). An employer's actions will be considered willful when the employer knowingly violates the ADEA, or acts in reckless disregard of the ADEA. McLaughlin v. Richland Shoe Co., \_\_\_ U.S. \_\_\_, 108 S.Ct. 1677 (1988); Trans World Airlines, Inc. v. Thurston, 469 U.S. 111 (1985). "For a willful violation to exist in a disparate treatment claim, a factfinder

---

<sup>2</sup>Plaintiff relies upon Dempsey v. Pacific Bell Company, 789 F.2d 1451 (9th Cir. 1986), and suggests the Court use its equitable powers to extend the limitations period because the Plaintiff "honestly believed the discriminatory act occurred on February 14, 1986." Dempsey addressed whether the 180-day or 300-day statutes of limitations under 29 U.S.C. §626(d)(1)-(2) act as a jurisdictional bar to bringing suit and not whether the two year statute of limitations may be equitably tolled. Furthermore, Plaintiff did not assert she came within the conditions the Ninth Circuit outlined as reasons to toll the statute of limitations. Therefore, this Court declines to exercise its equitable powers and toll the statute of limitations.

must find that age was the *predominant* factor in the employer's decision." Cooper v. Asplundh Tree Expert Co., 836 F.2d 1544, 1551 (10th Cir. 1988) (emphasis in original).

"The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

Celotex Corporation v. Catrett, 477 U.S. 317, 322 (1986). Plaintiff has not come forward with evidence establishing that her age was Defendant's predominant reason for terminating her employment. Defendant relates a history of performance evaluations which called Plaintiff's judgment into question. Plaintiff's only evidence of age discrimination is a conversation she overheard between Ron Deep and Scott Baker in which Deep stated the company wanted to improve its image. Plaintiff also relies upon the age of Hanover's current employees to support her claim Hanover implemented such a policy. Mizer Depo., pp. 191-193; Deep Depo., pp. 90-92, and 96. Although such evidence may be probative of an age discrimination claim, there is no evidence indicating a willful violation of the ADEA. Because Plaintiff has come forward with no evidence indicating age was the predominant reason for her termination, her action is barred by the two year statute of limitations.

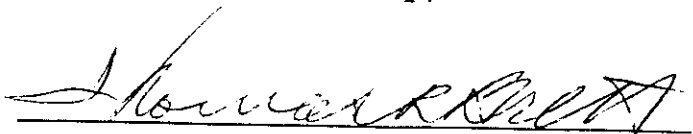
Finally, Plaintiff alleges she was constructively discharged because her working conditions were so intolerable she was forced



to resign her employment. Plaintiff states that having her files reviewed daily was unbearable, thereby justifying her resignation. Plaintiff's files were reviewed daily because she was on a 90-day probationary status. This is not the type of intolerable working conditions contemplated under constructive discharge. Plaintiff acknowledges she thought it would have been futile to work throughout the probationary period; therefore, she accepted 90 days' full pay and benefits in return for her voluntary resignation. Mizer Depo. at p. 184. There is no evidence of an oppressive, intolerable working environment other than Plaintiff's opinion that her probationary period would have been futile and the daily review of her underwriting decisions would have been mentally stressful.

It is therefore ORDERED that Defendant's Motion for Summary Judgment be SUSTAINED and the case dismissed.

IT IS SO ORDERED, this 28<sup>th</sup> day of February, 1989.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RITA HEATHERINGTON,  
Plaintiff,

vs.

VOLKSWAGEN OF AMERICA, INC.,  
and AUDI NSU AUTO UNION  
AKTIENGESSELLSHAFT, a Foreign  
Corporation,

Defendants.

No. 87-C-842-B

FILED

FEB 28 1988

Jack C. Silver,  
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court upon Defendant Audi NSU Auto Union Aktiengesellschaft's ("Audi") Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b). For the reasons stated herein, Defendant's Motion is sustained.

Defendant Audi is a West German corporation, organized and existing under the laws of the Federal Republic of Germany. Plaintiff attempted to effectuate service of process upon Audi by serving Co-Defendant Volkswagen of America, Inc.'s service agent, The Corporation Company. The Federal Republic of Germany ratified The Hague Convention on the Service Abroad and Extra-Judicial Documents in Civil or Commercial Matters, 28 U.S.C.A. Appendix. Article 8 allows service of judicial documents directly through its diplomatic or consular agents and Article 10 allows service through postal channels. Pursuant to paragraph 2(a) of Article 21, the Federal Republic of Germany objected to the transmission of judicial papers as outlined in Articles 8 and 10. Note 7a (4) of

the Hague Convention. Therefore, Plaintiff's attempt to effectuate service upon Audi by serving Volkswagen of America, Inc. is defective and Defendant Audi's Motion to Dismiss is SUSTAINED.

IT IS SO ORDERED, this 28th day of February, 1989.

A handwritten signature in cursive script, reading "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL SCOTT PINSONNEAULT  
a/k/a MICHAEL PINSONNEAULT;  
SHERRY PINSONNEAULT a/k/a  
SHERRY L. PINSONNEAULT a/k/a  
SHERRY LEE PINSONNEAULT;  
RONALD G. ROBINSON d/b/a RONCO  
CONSTRUCTION AND SUPPLY a/k/a  
RONCO CONSTRUCTION COMPANY  
a/k/a RONCO SIDING AND  
CONSTRUCTION COMPANY, a single  
proprietorship; BRIERCROFT  
SERVICE CORPORATION; COUNTY  
TREASURER, Osage County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Osage County,  
Oklahoma,

Defendants.

FEB 28 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-552-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day  
of February, 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Osage County,  
Oklahoma, and Board of County Commissioners, Osage County,  
Oklahoma, appear by John S. Boggs, Jr., Assistant District  
Attorney, Osage County, Oklahoma; and Defendants, Michael Scott  
Pinsonneault a/k/a Michael Pinsonneault; Sherry Pinsonneault  
a/k/a Sherry L. Pinsonneault a/k/a Sherry Lee Pinsonneault;  
Ronald G. Robinson d/b/a Ronco Construction and Supply a/k/a

Ronco Construction Company a/k/a Ronco Siding and Construction Company, a single proprietorship; and Briercroft Service Corporation, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Ronald G. Robinson d/b/a Ronco Construction and Supply a/k/a Ronco Construction Company a/k/a Ronco Siding and Construction Company, a single proprietorship, was served with Summons and Complaint on October 13, 1988; that the Defendant, Briercroft Service Corporation, acknowledged receipt of Summons and Complaint on June 20, 1988; that Defendant, County Treasurer, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on June 16, 1988; and that Defendant, Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on June 16, 1988.

The Court further finds that the Defendants, Michael Scott Pinsonneault a/k/a Michael Pinsonneault and Sherry Pinsonneault a/k/a Sherry L. Pinsonneault a/k/a Sherry Lee Pinsonneault, were served by publishing notice of this action in the Pawhuska Daily Journal-Capital, a newspaper of general circulation in Osage County, Oklahoma, once a week for six (6) consecutive weeks beginning November 11, 1988, and continuing to December 16, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants,

Michael Scott Pinsonneault a/k/a Michael Pinsonneault and Sherry Pinsonneault a/k/a Sherry L. Pinsonneault a/k/a Sherry Lee Pinsonneault, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Michael Scott Pinsonneault a/k/a Michael Pinsonneault and Sherry Pinsonneault a/k/a Sherry L. Pinsonneault a/k/a Sherry Lee Pinsonneault. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer herein on June 20, 1988; and that the Defendants, Michael Scott Pinsonneault a/k/a Michael Pinsonneault; Sherry Pinsonneault a/k/a Sherry L. Pinsonneault a/k/a Sherry Lee Pinsonneault; Ronald G. Robinson d/b/a Ronco Construction and Supply a/k/a Ronco Construction Company a/k/a Ronco Siding and Construction Company, a single proprietorship; and Briercroft Service Corporation, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eleven (11), ROSS SUBDIVISION to Osage County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 27, 1982, Michael Scott Pinsonneault and Sherry Pinsonneault executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$30,000.00, payable in monthly installments, with interest thereon at the rate of 14 percent per annum.

The Court further finds that as security for the payment of the above-described note, Michael Scott Pinsonneault and Sherry Pinsonneault executed and delivered to the United

States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated August 27, 1982, covering the above-described property. Said mortgage was recorded on August 31, 1982, in Book 622, Page 65, in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, Michael Scott Pinsonneault a/k/a Michael Pinsonneault and Sherry Pinsonneault a/k/a Sherry L. Pinsonneault a/k/a Sherry Lee Pinsonneault, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Michael Scott Pinsonneault a/k/a Michael Pinsonneault and Sherry Pinsonneault a/k/a Sherry L. Pinsonneault a/k/a Sherry Lee Pinsonneault, are indebted to the Plaintiff in the principal sum of \$30,520.48, plus interest at the rate of 14 percent per annum from April 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, Ronald G. Robinson d/b/a Ronco Construction and Supply a/k/a Ronco Construction Company a/k/a Ronco Siding and Construction Company, a single proprietorship, and Briercroft Service Corporation, are in default and have no right, title, or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Osage County,



Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$17.26 which became a lien on the property as of 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Michael Scott Pinsonneault a/k/a Michael Pinsonneault and Sherry Pinsonneault a/k/a Sherry L. Pinsonneault a/k/a Sherry Lee Pinsonneault, in the principal sum of \$30,520.48, plus interest at the rate of 14 percent per annum from April 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.32 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have and recover judgment in the amount of \$17.26 for personal property taxes for the year of 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Ronald G. Robinson d/b/a Ronco Construction and Supply a/k/a Ronco Construction Company a/k/a Ronco Siding and Construction Company, a single proprietorship, and Briercroft Service Corporation, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$17.26, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

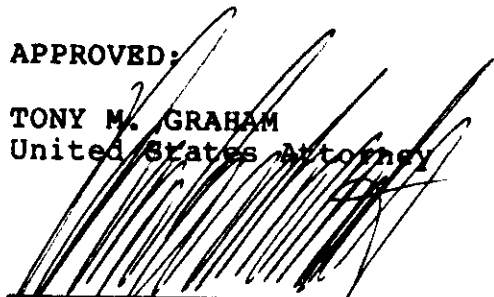
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

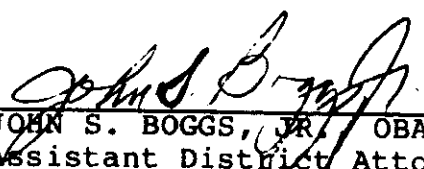
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT, OBA #741  
Assistant United States Attorney

  
JOHN S. BOGGS, JR. OBA #  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Osage County, Oklahoma

Judgment of Foreclosure  
Civil Action No. 88-C-552-C

**F I L E D**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**FEB 28 1989**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

CORE-MARK DISTRIBUTORS )  
MID-CONTINENT, INC., d/b/a )  
TULSA TOBACCO COMPANY, )

Plaintiff, )

vs. )

No. 88-C-1617-B

CHARLES R. FARREN, )  
individually and d/b/a )  
FARREN ENTERPRISES, )

Defendant. )

**STIPULATED JUDGMENT**

This matter comes on before the undersigned Judge of the District Court upon the stipulation of the parties. Based on those stipulations, the Court finds:

1. Plaintiff is a foreign corporation. Defendant is a resident of the Northern District of Oklahoma. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, the parties being of diverse citizenship and the amount in controversy exceeding \$10,000.00.

2. Defendant is indebted to Plaintiff on a note dated May 16, 1986, in the principal sum of \$41,659.62, interest thereon at the rate of 12% per annum from and after January 1, 1988 in the amount of \$4,999.15, as of January 1, 1989, and \$13.70 per diem thereafter.

3. Plaintiff is entitled to recover its costs in the amount of \$120.00 filing fee, \$25.00 service of process, and attorney's fees in the amount of \$2,000.00.

IT IS, THEREFORE,

ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against Defendant in the amount of \$48,803.77, together with interest at the rate of \$13.70 from and after January 1, 1989.

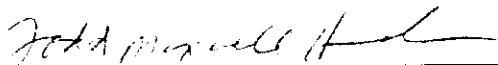
DATED THIS 28<sup>th</sup> day of February, 1989.

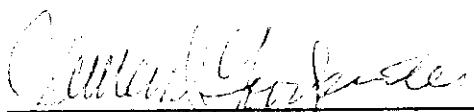
S/ THOMAS R. BRETT

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HONORABLE THOMAS R. BRETT  
U. S. DISTRICT JUDGE

FORM AND CONTENT APPROVED:

  
TODD MAXWELL HENSHAW  
ATTORNEY FOR PLAINTIFF

  
JAMES D. GOODPASTER  
ATTORNEY FOR DEFENDANT


  
CHARLES R. FARREN, DEFENDANT

# FILED

Jack C. Siver, Clerk  
U. S. DISTRICT COURT

No. 87-C-849-B

In keeping with the Order entered this date, Judgment is hereby entered in favor of the Plaintiff, Thurston Fire & Casualty Insurance Company, and against the Defendant, Crawford & Company, in the amount of Eighteen Thousand Seven Hundred Sixty One and 25/100 Dollars (\$18,761.25), as and for attorney's fees with interest thereon to run at the rate of 9.32% from the date hereon.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 28 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

SIDNEY K. SWINSON, Trustee in )  
Bankruptcy for Woodrow Wilson )  
Childers and Betty Jo )  
Childers, )

Plaintiff, )

vs. )

No. 86-C-824-E

BARUCH-FOSTER CORPORATION, )

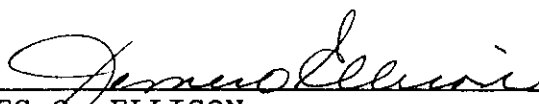
Defendant. )

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation.

ORDERED this 28<sup>th</sup> day of February, 1989.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

M & S MANAGEMENT CORPORATION, an  
Oklahoma corporation, d/b/a  
Bandanas' Restaurant,

Plaintiff,

vs.

AMERICAN EXPRESS TRAVEL RELATED  
SERVICES COMPANY, Inc., a New York  
corporation, and  
AMERICAN EXPRESS TRAVEL RELATED  
SERVICES COMPANY (DELAWARE), INC.  
a Delaware corporation,

Defendants.

FEB 26 1989

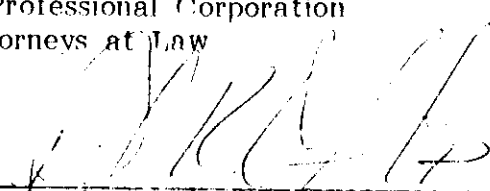
Case No. 87-C-1045 E

STIPULATION FOR DISMISSAL

Plaintiff, M & S Management Corporation, by its attorneys, Braly & Hinds, and defendants, American Express Travel Related Services Company, Inc., and American Express Travel Related Services Company (Delaware), Inc., by their attorneys, Lamun Mock Featherly Kuehling & Cunningham, hereby stipulate to a dismissal of this action with prejudice to any future action.

Dated: Tulsa, Oklahoma  
~~March~~ 28, 1989  
Feb.

BRALY & HINDS  
A Professional Corporation  
Attorneys at Law

BY:   
David K. Wheeler, ORA #11565  
1701 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-2806  
Attorneys for Plaintiffs



LAMUN MOCK FEATHERLY KUEHLING &  
CUNNINGHAM

BY: M. R. Morison  
M. R. Morison ORA # 11415  
5900 N. Grand Blvd.  
Oklahoma City, Oklahoma 73118  
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 27 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

GERALD E. MCDANIEL,

Plaintiff,

vs.

Case No. 86-C-423-E

KAISER ALUMINUM PROPERTIES,  
INC., a foreign corporation,  
The former KAISER AGRICULTURAL  
CHEMICAL CORPORATION,

Defendant.

ORDER DISMISSING CASE WITH PREJUDICE

Pursuant to a stipulation of the parties advising the Court that the issues involved in this case have been resolved and requesting dismissal with prejudice,

IT IS HEREBY ORDERED that the case be dismissed with prejudice, with each party to bear its own costs and attorneys fees.

Entered this 23<sup>d</sup> day of February, 1989

  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

ANADARKO LAND & EXPLORATION )  
COMPANY, an Oklahoma corporation )

Plaintiff, )

vs. )

WESTERN ENERGY, INC., a Utah )  
corporation, and JACK BURDICK )

Defendants. )

No. 88-C-973

**E I L E D**

FEB 27 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

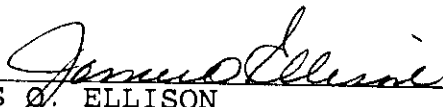
JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the action be dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within seven (7) months that settlement has not been completed and that entry of Judgment is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

ORDERED this 23<sup>rd</sup> day of February, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE **FILED**  
NORTHERN DISTRICT OF OKLAHOMA

FEB 27 1989

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CHARLES K. MULLINS,  
448583409

Defendant,

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL NUMBER 88-C-1598 B

DEFAULT JUDGMENT

A Default having been entered against the Defendant and counsel for the Plaintiff having requested Judgment against the defaulted Defendant and having filed a proper Affidavit, all in accordance with Rule 55(a) and (b)(1) of the Federal Rules of Civil Procedure and Rule 7 of the Rules of the District Court for the NORTHERN District of Oklahoma, now, therefore;

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, CHARLES K. MULLINS, in the principal sum of \$4260.23, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$16.40. Future costs and interest at the legal rate of 9.32%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 27<sup>th</sup> day of February, 1989.

U.S. DISTRICT COURT CLERK  
NORTHERN DISTRICT OF OKLAHOMA

By:

A. Miller  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ALTA R. DOBSON,

Plaintiff,

vs.

J & J PIANO COMPANY and  
FARMERS INSURANCE COMPANY,  
INC.,

Defendants.

No. 88-C-345-C ✓

FILED  
FEB 24 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

ON THIS 24<sup>th</sup> day of February, 1989, comes on for hearing Defendant's Application for Order of Dismissal With Prejudice. The Court acknowledges that Plaintiff has agreed to settle her claim with the Defendant, J & J Piano Company, for the amount of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00). The Court approves said settlement, and hereby approves said Application and orders that the case be dismissed with prejudice.

IT IS ORDERED, ADJUDGED AND DECREED by the Court that Defendant's Application be sustained and that Plaintiff's claim against Defendant J & J Piano Company be dismissed with prejudice.

W. A. L. Cook  
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

Robert W. Thompson  
Attorney for Plaintiff

W. A. L. Cook  
Attorney for Defendant  
J & J Piano Company

FILED

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT, STATE OF OKLAHOMA

FEB 24 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

LARRY EARL THOMPSON,

Plaintiff,

vs.

AMERICAN TECHNICAL COLLEGE, INC.,

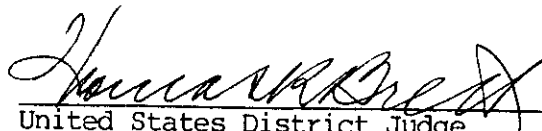
Defendant.

Case No. 88-C-1305-B

ORDER

COMES NOW the court and having considered all premises and noting  
all parties are agreed, enters its order of dismissal <sup>with prejudice</sup> of the above  
numbered and captioned case.

WHEREFORE, IT IS SO ORDERED this 24 day of February, 1989.

  
United States District Judge  
Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 24 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

R-I LIMITED, an Oklahoma  
Limited Partnership,

Plaintiff,

vs.

SINCLAIR OIL CORPORATION,  
a Wyoming corporation,

Defendant.

No. 87-C-738-B

J U D G M E N T

In accordance with the jury verdict filed December 21, 1988, Judgment is hereby entered in favor of Plaintiff R-I Limited and against Defendant, Sinclair Oil Corporation, in the amount of \$174,212.00 on Plaintiff's claim with postjudgment interest to run at the rate of 9.32% per annum from this date.

IT IS SO ORDERED this 24<sup>th</sup> day of February, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 24 1989

GERALDINE H. AKINS,

Plaintiff,

v.

OTIS R. BOWEN, Secretary of  
Health and Human Services,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 87-C-667-B

ORDER

This matter comes before the Court on Defendant Secretary of Health and Human Services' objection to the Report and Recommendation of the United States Magistrate Jeffrey S. Wolfe.

Claimant is 56 years old with a ninth grade education. She suffered a back injury in 1971. At that time she was a mounter and wirer at Western Electric. She received social security benefits from 1971 through July 1983.

As outlined in the Magistrate's order, Claimant Geraldine H. Akins refiled for benefits in April 1984. Since that time the case has been remanded twice to the Administrative Law Judge who has consistently denied benefits. On July 22, 1987, the Appeals Council denied the third request for review and the matter is before the Court after three administrative hearings.

The Magistrate ruled and the Secretary conceded at the hearing before this Court on February 15, 1989 that the Administrative Law Judge erred in finding that claimant could perform her past work. This Court finds there is a lack of substantial evidence in the record to support a decision that Plaintiff can perform the duties



at her past employment. In fact, the evidence supports only the conclusion claimant cannot perform the past work. Therefore, this Court finds the decision of the Administrative Law Judge must be reversed.

The parties cannot agree, however, whether an additional hearing before the Administrative Law Judge is necessary to determine whether claimant retains the capacity to perform an alternative work activity that exists in the national economy. The Secretary argues this case must be remanded to the Administrative Law Judge for the fourth time for that determination. Remand for additional fact finding is generally required. "However, outright reversal and remand for immediate award of benefits is appropriate when additional fact finding would serve no useful purpose." Dollar v. Bowen, 821 F.2d 530 (10th Cir. 1987). The Magistrate found and the Court agrees that additional fact finding is not appropriate in this case. Nothing will be gained from further hearings. There is ample evidence of disabling pain in the record and that claimant cannot perform alternative work.

The Secretary originally objected to the Magistrate's report based on the application of the fifteen year rule found in 20 C.F.R. §404.1565(a). Counsel for the Secretary conceded at the hearing on February 15, 1989 that except for a brief time, claimant has not worked in fifteen years. The case, however, does not turn on the fifteen year rule.

The Secretary also contends the Magistrate erroneously applied the treating physician rule. The Secretary himself quoted the

standard as set out by the Tenth Circuit in weighing the treating physician's opinion as to whether there is a medical disability.

"Substantial weight is afforded the opinions of a claimant's treating physician. Byron v. Heckler, 742 F.2d at 1235. While the conclusion of a treating physician does not direct a finding of 'disabled' or 'nondisabled,' 20 C.F.R. §§404.1527, 416.927 (1986), it cannot be disregarded absent a showing of 'specific, legitimate reasons.' Byron v. Heckler, 742 F.2d at 1235."

Claimant's most current treating physician, Dr. Liou<sup>1</sup>, reported that claimant was medically unsuitable for employment. (R. 325). The Administrative Law Judge failed to state a legitimate reason for disregarding this testimony.


As was thoroughly described by the Magistrate at pages 11 through 17 of his report, the record clearly establishes claimant suffers from a nonexternal impairment of pain. Further, in response to the Administrative Law Judge's question, the vocational expert testified that although sedentary jobs exist where a person can work from a seated position, if claimant had a nonexternal impairment of pain, she could not work for 8 hours and could not keep up with quotas. (R. 126). The Administrative Law Judge also failed to state a reason why this testimony was disregarded.

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<sup>1</sup> At the hearing before this Court on February 15, 1989 counsel for the Secretary stated for the first time that Dr. Flesher, who gave an adverse opinion for claimant in 1983, was claimant's treating physician in 1973. However, there is no evidence in the record that Dr. Flesher was the treating physician in 1983 at the time of the report.

Therefore, the objections to the Magistrate's ruling and recommendation are overruled and the case is reversed and remanded for immediate calculations and award of benefits from September 1983 through the present.

DATED this 24 day of February, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

KENNETH G. DIXON,

Plaintiff,

v.

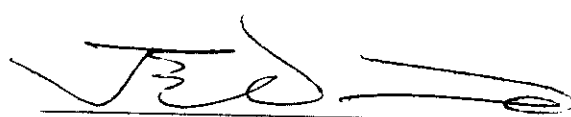
GLASROCK HOME HEALTH CARE,  
INC., a Georgia Corporation,

Defendant.

No. 88-C-285-E

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the plaintiff, Kenneth G. Dixon, hereby stipulates with the defendant, Glasrock Home Health Care, Inc., that this action shall be dismissed with prejudice. Each party is to bear its own costs and attorney fees.

  
T. E. DRUMMOND

Of the Firm:

DRUMMOND, RAYMOND & CLAUSING

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(918) 749-7378

ATTORNEY FOR PLAINTIFF

  
LEONARD COURT

Of the Firm:

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(405) 235-7700

ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 23 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE  
CORPORATION,

Plaintiff,

vs.

JIM L. TREAT AND MAKO, INC.,

Defendants.

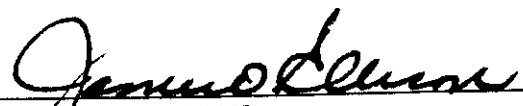
No. 88-C-171-E

ADMINISTRATIVE CLOSING ORDER

The Defendant Mako, Inc. having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 22<sup>nd</sup> day of February, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FEB 23 1989

RAYMOND F. PRICE,

Plaintiff,

vs.

ARGONAUT INSURANCE COMPANY,  
a Foreign Insurer,

Defendant.

JACK C. STEVENSON, CLERK  
U.S. DISTRICT COURT

No. 88-C-661-C

O R D E R

Now before the Court for its consideration is the objection of the plaintiff Raymond F. Price to the Report and Recommendation of the Magistrate, the latter filed November 22, 1988. The Magistrate has recommended that Defendant's Motion to Dismiss be granted.

Plaintiff brought this action pursuant to the Oklahoma Workmen's Compensation Act, 85 O.S. §1. The single issue determined by the Magistrate was whether plaintiff may claim a "second injury", occasioned by the insurer's alleged misconduct, in relation to the handling of his workmen's compensation claim. The Magistrate cited 85 O.S. §12 which provides, in part


The liability prescribed in Section 11 of the title shall be exclusive and in place of all other liability of the employer and any of his employees...

to deny a separate cause of action. The Magistrate found further clarification in §24.2 (B) which provides for a penalty for failure of the insurer of the employer to pay weekly benefits within the time provided by law. The Magistrate correctly found that the plaintiff's claim is provided for in the Act and, therefore, falls within its exclusivity provision. The United States Court of Appeals for the Tenth Circuit used the same reasoning under New Mexico law in Escobedo v. American Employers Ins. Co., 547 F.2d 544 (10th Cir. 1977).

The Court has independently reviewed the record and finds that the Report and Recommendation of the Magistrate is supported by applicable Oklahoma law. The Magistrate's Report and Recommendation is affirmed and adopted as the Findings and Conclusions of this Court.

It is therefore ordered that the Motion to Dismiss brought by the defendant is hereby granted.

IT IS SO ORDERED this 23<sup>rd</sup> day of February, 1989.

  
H. DALE COOK, Chief Judge  
United States District Court

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE FEB 23 1989  
NORTHERN DISTRICT OF OKLAHOMA

LARRY L. CHANEY,

Plaintiff,

v.

RON CHAMPION, et al,

Defendants.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

88-C-1306-B

ORDER

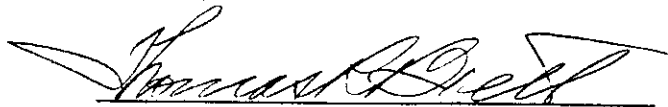
The Court has for consideration the Report and Recommendation of the United States Magistrate filed February 3, 1989 in which the Magistrate recommended that Plaintiff's Motion for a Preliminary Injunction be denied as to Plaintiff's other personal property as set forth in the report and recommendation.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that the recommendation of the United States Magistrate, that Plaintiff's Motion for a Preliminary Injunction be denied as to Plaintiff's other personal property, is hereby adopted, and Plaintiff's Motion is hereby denied as relates to his personal property.

Dated this 23<sup>rd</sup> day of February, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

BENJAMIN O. KEAFER, JR.,  
Plaintiff,  
v.  
OSAGE COUNTY JAILER,  
Defendant.

FILED

FEB 23 1989

87-C-871-~~8~~ Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER


The Court has for consideration the Report and Recommendation of the Magistrate filed January 13, 1989 in which the Magistrate recommended that Plaintiff's In Forma Pauperis Complaint be dismissed as frivolous pursuant to 28 U.S.C. §1915(d).

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that Plaintiff's In Forma Pauperis Complaint is dismissed as frivolous pursuant to 28 U.S.C. §1915(d).

Dated this 22<sup>nd</sup> day of February, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
vs. )  
 )  
RAYMOND HAROLD WILLIAMS, et al., )  
 )  
Defendants. )

CIVIL ACTION NO. 88-C-687-B

APPLICATION FOR  
ENTRY OF DEFAULT JUDGMENT

COMES NOW the Plaintiff by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and would show that Defendants, Raymond Harold Williams and Patricia R. Williams, were served by publication as is evidenced by the Proof of Publication filed herein on January 17, 1989; that Defendant, Nor-Com Investments, an Oklahoma limited partnership, was served with Summons and Complaint on September 29, 1988; and that Defendant, Franklin and Underwood Properties, an Oklahoma general partnership, was served with Summons and Complaint on September 29, 1988. The time within which the Defendants could have answered or otherwise moved has expired and has not been extended. The Defendants, Raymond Harold Williams; Patricia R. Williams; Nor-Com Investments, an Oklahoma limited partnership; and Franklin and Underwood Properties, an Oklahoma general partnership, have not answered or otherwise moved and default has, therefore, been duly entered.

The Plaintiff, United States of America, would further show that it is, therefore, entitled to recover the amounts shown

in the Complaint, and that upon failure to pay the same, Plaintiff is entitled to foreclosure of its mortgage and sale of the subject property as prayed for in the Complaint.

WHEREFORE, Plaintiff prays that the Court enter default judgment against the Defendants, Raymond Harold Williams; Patricia R. Williams; Nor-Com Investments, an Oklahoma limited partnership; and Franklin and Underwood Properties, an Oklahoma general partnership, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure as prayed for in the Complaint, and the costs of this action.

UNITED STATES OF AMERICA

TONY M. GRAHAM  
United States Attorney



PHIL PINNELL, OBA #7169  
Assistant United States Attorney

FILED

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

No. 88-C-811-C ✓

In an order entered on July 25, 1988, the bankruptcy court found that the value of the property was \$170,000, and that Wells Fargo had (1) a secured claim in the amount of \$170,000 minus the

value of the first mortgage, and (2) an unsecured claim to the extent of the remainder of the value of its claim. The order concluded:

IT IS FURTHER ORDERED that the debtor [sic] shall within sixty (60) days from the entry of this order to pay [sic] Wells Fargo the value of its secured claim, failing which, the automatic stay will be modified without further hearing allowing Wells Fargo to enforce its lien rights by foreclosure.

On August 4, 1988, Wells Fargo filed its notice of appeal from the bankruptcy court's order. On September 30, 1988, Wells Fargo filed in state court a foreclosure action on the property in question. The debtors argue that Wells Fargo "should be required to elect to proceed with the abandonment of the Appeal or to discontinue the action in Rogers County, or should be required to do so."

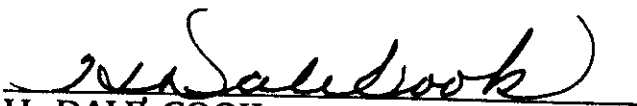
The appellees state that they did not previously exercise their right of redemption because Bankruptcy Rule 8005 stays proceedings in the bankruptcy court pending appeal. This is not correct. The Rule clearly indicates that a stay must be requested, and "must ordinarily be presented to the bankruptcy judge in the first instance." The Rule states that such a motion may be made to the district court, "but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy judge." The only showing by the debtors in this regard is that they made the request of the bankruptcy judge too late, after he had been deprived of jurisdiction by the filing of the notice of appeal. The Court believes this to be insufficient. See In re Wilson, 53 B.R. 123 (D.Mon. 1985). Furthermore, it would appear

to be the appellant who should ask for a stay of an order pending appeal. Wells Fargo did not do so.

It seems clear that the bankruptcy court balanced the equities itself and imposed a stay of 60 days within which the debtors could seek redemption of the property. That stay expired on September 23, 1988. The order expressly provides that, upon debtors' failure to redeem, Wells Fargo could foreclose without further hearing in the bankruptcy court. The fact that the debtors failed to avail themselves of the stay imposed by the trial court, even if premised upon misunderstanding of the clear language of the order and Rule 8005, does not persuade this Court that further delay should be countenanced.

It is the Order of the Court that the emergency motion of the appellees to dismiss or for injunction is hereby DENIED. The appellant Wells Fargo is directed to advise the Court if the foreclosure proceedings render its appeal moot.

IT IS SO ORDERED this 23<sup>rd</sup> day of February, 1989.

  
H. DALE COOK  
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TERRITORY SAVINGS AND LOAN  
ASSOCIATION OF SEMINOLE,  
et al.,

Plaintiffs,

vs.

KENNETH E. BAILEY, et al.,

Defendants.

No. 88-C-194-E

FILED

FEB 23 1989


Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation.

ORDERED this 22<sup>d</sup> day of February, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MISSOURI PACIFIC RAILROAD CO., )

Plaintiff, )

vs. )

CARTWRIGHT TRANSFER AND )  
STORAGE, INC. and AL MULLEN, )

Defendants. )

No. 85-C-387-E ✓

**F I L E D**


FEB 23 1989 5

JUDGMENT

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants Cartwright Transfer and Storage, Inc. and Al Mullen take nothing by way of their counterclaims filed herein as a result of the jury verdict rendered herein on February 9, 1989. Plaintiff is awarded its costs of this action.

ORDERED this 22<sup>nd</sup> day of February, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

103



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TAMARA MICHELLE FIELDS,

Plaintiff,

vs.

J. C. PITTMAN COMPANY, INC.,  
et al.,

Defendants.

No. 86-C-939-E ✓

FILED

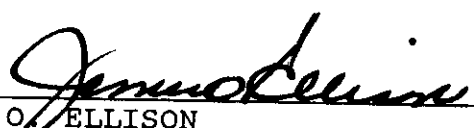
FEB 28 1989

JUDGMENT

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff recover judgment against the Defendants in the sum of \$175,000.00 as a result of the jury verdict rendered hereon on August 22, 1988. Plaintiff is awarded her costs of this action.

ORDERED this 22<sup>nd</sup> day of February, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 23 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

GEORGE E. COE, et al.,

Plaintiffs,

vs.

UTILITY CONTRACTORS, INC.  
d/b/a UTILITY CONTRACTORS  
OF OKLAHOMA, INC.,


Defendant.

No. 88-C-18-E

JUDGMENT

Judgment is granted in favor of Plaintiffs George E. Coe and Nancy G. Coe and against Utility Contractors, Inc., a foreign corporation d/b/a Utility Contractors of Oklahoma, Inc. in the sum of \$1,000.00 as a result of the jury verdict rendered herein on January 27, 1989. Plaintiffs are awarded their costs of this action.

ORDERED this 22<sup>nd</sup> day of February, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 23 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

THE CIT GROUP/FACTORING  
MEINHARD-COMMERCIAL WESTERN,  
INC.,

Plaintiff,

vs.

SIGHT & SOUND DISK-TRIBUTORS,

Defendant,

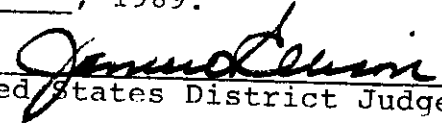
Case No. 88-C-1657-E

ORDER OF DISMISSAL

This matter comes before the Court pursuant to the Stipulation of Dismissal entered into and filed by all parties who have appeared in this action. The Court, pursuant to Fed. R. Civ. P. 41(a)(1)(ii), hereby finds that this action should be dismissed.

IT IS THEREFORE ORDERED that this action be dismissed.

Dated this 22 day of Feb., 1989.

  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**FEB 23 1989**

FLINTCO, INC., an Oklahoma  
corporation,

Plaintiff,

v.

ALUMAX ALUMINUM CORPORATION,  
a Delaware corporation, M&T  
SPECIALTIES, INC., an Oklahoma  
corporation; and HTB, INC.,  
an Oklahoma corporation,

Defendants.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 88-C-198-B

**ORDER TO REMAND**

THIS MATTER came before the Court upon the Motion of Plaintiff Flintco, Inc. for an order to be issued pursuant to 28 U.S.C. §1447 remanding this case to the District Court for Tulsa County, State of Oklahoma, the argument of counsel, and the entire record herein.

IT APPEARING TO THE COURT that because Plaintiff Flintco and Defendants M&T Specialties, Inc. and HTB, Inc., are all deemed to be citizens of Oklahoma pursuant to 28 U.S.C. §1332(c), there is not complete diversity of the parties; and

IT FURTHER APPEARING TO THE COURT that, pursuant to 28 U.S.C. §1332(a), the absence of complete diversity of the parties removes from this Court subject matter jurisdiction to determine the claims asserted herein; and

IT FURTHER APPEARING TO THE COURT that, absent subject matter jurisdiction in this Court, the Court must remand this action to the District Court for Tulsa County, State of Oklahoma, pursuant to 28 U.S.C. §1447(c).

NOW, THEREFORE, IT IS ORDERED that this action be, and the same hereby is, remanded to the District Court for Tulsa County, State of Oklahoma.

IT IS FURTHER ORDERED that the Clerk shall mail a certified copy of this Order to Remand to the Clerk of the District Court for Tulsa County, State of Oklahoma, and take such additional action as is necessary to effect this Order of Remand.

DATED this 23<sup>rd</sup> day of February, 1989.

S/ THOMAS R. BRETT

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Approved as to form:

Russell H. Harbaugh, Jr.  
Douglas L. Inhofe  
David J. Hyman

By: 

David J. Hyman

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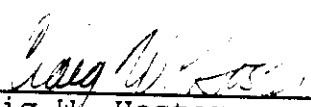
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1714 First National Building  
Tulsa, Oklahoma 74103

Attorneys for Defendant  
HTB, INC.

  
Craig W. Hoster  
Gary R. McSpadden  
BAKER, HOSTER, MCSPADDEN, CLARK,  
RASURE & SLICKER  
800 Kennedy Building  
Tulsa, Oklahoma 74103

Attorneys for Defendant  
M&T SPECIALTIES, INC.



HAP:bj

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 22 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

STATE FARM MUTUAL AUTOMOBILE INSURANCE )  
COMPANY, an Illinois corporation, )

Plaintiff, )

vs. )

No. 88-C-280 B

GREYHOUND LINES, INC., a California )  
corporation, et al. )

Defendants. )

ORDER

NOW on the 22<sup>nd</sup> day of February, 1989, there came on for hearing the Motion to Dismiss of Defendant Saint Francis Hospital, Inc. Being fully advised in the premises and finding that Defendant has no monetary interest in the monies before this Court and that Defendant has been paid the amount of its bill and has waived any lien against decedent Mandolyn Miller and/or her estate, this Court finds that Defendant should be is and is hereby dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Saint Francis Hospital, Inc., be dismissed, with Defendant to bear its own costs.

S/ THOMAS R. BRETT

~~MAGISTRATE JOHN LEO WAGNER~~  
U.S. DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on this 17th day of February, 1989, I mailed a true and correct copy of the foregoing instrument with the correct and proper postage thereon fully prepaid to:

Jody R. Nathan  
525 South Main Suite 1500  
Tulsa, Oklahoma 74103

Dr. E. P. Cash  
201 South 36th  
Muskogee, Oklahoma 74401

Chicago Trauma Center  
P. O. Box 5198  
Oakbrook, Illinois 60522

Radiology Consultants of Tulsa  
3010 South Harvard Room 220  
Tulsa, Oklahoma 74119

MidAmerica Preferred Insurance Co.  
2800 Rockcreek Parkway  
North Kansas City, Missouri 64117

Don Pearson  
P. O. Box 1371  
Muskogee, Oklahoma 74401

Leonard B. Miller  
230 West Monroe Suite Suite 2000  
Chicago, Illinois 60605

Creekmore Wallace  
P. O. Box 90  
Sapulpa, Oklahoma 74067

Michael Lewis  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103

Dan George  
P. O. Box 748  
Sallisaw, Oklahoma 74955

Bill V. Wilkinson  
502 West Sixth Street  
Tulsa, Oklahoma 74119

Dr. Jaroslaw Slareiko  
1955 West Chicago Avenue  
Chicago, Illinois 60622

Dr. William B. Dawson  
P. O. Box 1847  
Muskogee, Oklahoma 74402

Saint Francis Hospital  
6161 South Yale  
Tulsa, Oklahoma 74135

AllState Insurance Company  
AllState Plaza  
Northbrook, Illinois 60062

Universal Casualty Company  
48 Will Rogers Building  
Oklahoma City, Oklahoma 73105

Maynard Ungerman  
P. O. Box 701917  
Tulsa, Oklahoma 74170-1917

Kathryn A. Motes  
812 Henderson #22  
Killeen, Texas 76541

Arthur Krawitz  
1202 Kirkwood Highway  
Wilmington, Delaware 19805

Glen R. Graham  
115 West Third Suite 570  
Tulsa, Oklahoma 74103

Nancy Siegle  
9 East Fourth Street Suite 400  
Tulsa, Oklahoma 74119

---

HARRY A. PARRISH

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

FILED

FEB 22 1989

STONEY MICHAEL VOWELL and TODD  
JOSEPH VOWELL, minors, by and  
through their mother and  
Guardian Ad Litem, KAREN VOWELL

Plaintiffs,

vs.

OFFICE OF SERVICEMEN'S GROUP  
LIFE INSURANCE, a Federal Agency,

Defendant.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

Case No. 88-C-1427B

ORDER OF DISMISSAL

On this 22 day of February, 1989, upon written application of the parties for an order of dismissal with prejudice of the complaint and all causes of action, the Court, having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the complaint and have requested the Court to dismiss the complaint with prejudice to any future action, and the Court, being fully advised in the premises, finds that said complaint should be dismissed; it is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the complaint and all causes of action of the Plaintiff filed herein against the Defendant be and the same are hereby dismissed with prejudice to any further action.

S/ THOMAS R. BRETT

United States District Judge

F I L E D

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 22 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JANET K. BASCOM,

Plaintiff,

vs.

Case No. 88-C-859-B

UNITED INDUSTRIES CORPORATION,  
d/b/a TULSA SCREW PRODUCTS CO.,  
a foreign corporation,

Defendant.

O R D E R

Upon the stipulation of the parties and for good cause shown,  
it is hereby ordered that the above-entitled cause of action be  
and hereby is dismissed with prejudice, each party to bear its own  
costs incurred to date.

ENTERED this 22<sup>nd</sup> day of February, 1989.

S/ THOMAS R. BRETT

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MIAMI SENIOR CITIZENS HOUSING  
ASSOCIATION, an Oklahoma  
limited partnership,

Plaintiff,

vs.

Case No. 86-C-1081-E

OKLAHOMA II INVESTORS, LTD., a  
California limited partnership,

Defendant,

GARY J. HENDLER, et al.,

Intervenors and  
Third-Party  
Plaintiffs,

vs.

DAVID F. LITTLE, BILL W. GRIDER  
and BILL CURRENS,

Third-Party  
Defendants.


JOINT DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Miami Senior Citizens Housing Association, an Oklahoma limited partnership, the Third-Party Defendants, David F. Little, Bill W. Grider and Bill Currens, the Defendant, Oklahoma II Investors, Ltd., a California limited partnership, and the Third-Party Plaintiffs, Gary J. Hendler, Gerald Breslauer, as Trustee of the VNB Grantor Trust, Gerald Breslauer, as Trustee, BJR Investment III, Quincy Jones, Richard M.

Richards, Joel Jacobson, as Trustee of the Laurel Trust, Sidney Sheldon and Colin Higgins, in the above-captioned case and hereby dismiss all of their claims, proposed claims, counterclaims and third-party claims with prejudice as to the refiling of the same, having reached an agreement settling the matters involved herein.

DOYLE & HARRIS

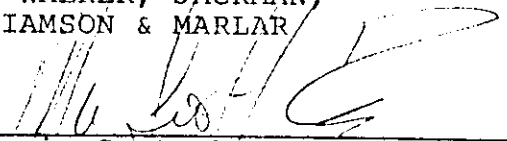
By

  
Michael D. Davis  
1414 South Galveston  
Tulsa, OK 74101  
(918) 582-0090

ATTORNEYS FOR PLAINTIFF AND  
THIRD-PARTY DEFENDANTS

PRAY, WALKER, JACKMAN,  
WILLIAMSON & MARLAR

By

  
Marcia Scott Page 6858  
900 Oneok Plaza  
Tulsa, OK 74103  
(918) 584-4136

ATTORNEYS FOR DEFENDANT AND  
THIRD-PARTY PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MARILYN LOVEALL,

Plaintiff,

vs.

OTIS R. BOWEN, M. D., Secretary  
of Health and Human Services,

Defendant.

No. 87-C-1038-C ✓

O R D E R

Now before the Court for its consideration is the appeal by the defendant, Otis R. Bowen, Secretary of Health and Human Services, of the Magistrate's Report and Recommendation, the latter filed on December 9, 1988. The Magistrate's recommendation is that plaintiff, Marilyn Loveall, be granted disability benefits.

Defendant's objection is based on his claim that the Magistrate impermissibly reweighed the evidence and incorrectly applied the substantial evidence test in overturning the Administrative Law Judge's (ALJ) findings regarding the treating physician's opinion and plaintiff's subjective complaints of pain.

The Magistrate correctly states the scope of review as limited by 42 U.S.C. § 405(g). He acknowledges that "the Secretary's findings stand if they are supported by 'such relevant evidence as a reasonable mind might accept to support a conclusion.'" Richardson v. Parales, 402 U.S. 389, 401 (1971) citing Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938).

The Magistrate and the Secretary differ as to the weight which must be given to the claimant's treating physician's evaluation. The Tenth Circuit has considered this issue repeatedly. "Unless good cause is shown to the contrary, the Secretary must give substantial weight to the testimony of the claimant's treating physician....If the opinion of the claimant's physician is to be disregarded, specific legitimate reasons for this action must be set forth." Byron v. Heckler, 742 F. 2d 1232, 1237 (10th Cir. 1984). "While the ALJ is authorized to make a final decision concerning disability, he can not interpose his own 'medical expertise' over that of a physician, especially when that physician is the regular treating doctor for the disability applicant." Kemp v. Bowen, 816 F.2d 1469 (10th Cir. 1987)

Dr. Lawrence A. Jacobs, claimant's treating physician and a board certified rheumatologist, found "that Ms. Loveall is incapable of engaging in substantial gainful employment due to the activity of the systemic lupus erythematosus." (Tr. 148) Dr. Jacobs had treated Ms. Loveall since 1981.

The ALJ found that the doctor's treatment notes and claimant's diary along with claimant's demeanor at the hearing, contradicted the doctor's conclusion. The doctor's notes and the diary contained reports of pain, medication and fatigue, as well as positive comments such as "doing well" and "stable". But, as the Magistrate noted, "the treating physician reported the plaintiff has been continuously symptomatic since 1981."

The Magistrate has not impermissively reweighed the evidence.



As a matter of law, selected and contradicted excerpts from physician's notes and the claimant's diary, viewed in the context of the entire record, cannot be considered an adequate basis for an administrative decision. See Broadbent v. Harris, 698 F.2d 407 (10th Cir. 1983). The Magistrate did not err in finding that the Secretary's decision is not supported by substantial evidence.

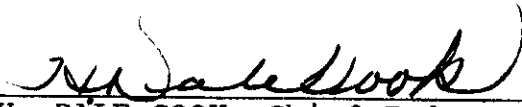
Because the ALJ determined this case at step four of the Social Security sequential evaluation process, he did not address the question of whether a vocational expert should evaluate plaintiff's work skills. A finding that plaintiff cannot return to her prior work shifts the burden to the Secretary to prove "that the claimant has the residual capacity to do other work that exists in the national economy." Talbot v. Heckler, 814 F.2d 1456, 1460 (10th Cir. 1987) The Magistrate reversed with directions to pay benefits from the date first alleged, overlooking this issue. Since claimant is not disabled as a matter of law using the the SSA Medical-Vocational Guidelines, 20 C.F.R., pt. 404, subpt. P, app. 2 (1986), additional factfinding is necessary to allow the Secretary an opportunity to sustain his burden.

The Court has independently reviewed the pleadings and briefs of the parties and the case file and finds that the recommendation of the Magistrate as to the claimant's ability to return to her prior work is reasonable under the circumstances of this case and consistent with applicable law. However, the Court finds that the Magistrate's order that benefits be paid from the date first alleged, should be set aside in order that the Secretary be give

an opportunity to prove that work exists in the national economy suitable for the claimant. The case is therefore remanded to the Secretary of Health and Human Services for appropriate action.

Premises considered, it is the Order of the Court that Defendant's Objection to the Report and Recommendation of the United States Magistrate be dismissed in part and granted in part.

IT IS SO ORDERED this 21<sup>st</sup> day of February, 1989.

  
H. DALE COOK, Chief Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

MICHAEL W. LEE,  
215687437

Defendant,

CIVIL NUMBER 89-C-076 B

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Veterans Administration, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully Submitted,

UNITED STATES OF AMERICA

Herbert N. Standeven  
District Counsel  
Veterans Administration  
125 South Main Street  
Muskogee, OK 74401  
Phone: (918) 687-2191

By:

  
LISA A. SETTLE, VA Attorney

CERTIFICATE OF MAILING

This is to certify that on the 22 day of February, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: MICHAEL W. LEE, at 1218 South Atlanta Place, Tulsa, OK 74104.

  
LISA A. SETTLE, VA Attorney

FILED

FEB 23 1980

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROY HANNAFORD COMPANY, INC.,  
and LONNIE ECK, trustee in  
bankruptcy for Roy J.  
Hannaford, an individual,  
Plaintiff,

v.

CIGNA INSURANCE COMPANY, INC.,  
AETNA LIFE AND CASUALTY, INC.,  
ELLIS, CROTTY, POWERS, CAROON  
& BLACK a/k/a CAROON & BLACK  
OF TEXAS, INC., INSURANCE  
COMPANIES OF NORTH AMERICA,  
ALLAN CRISS and ORVILLE COBORN,  
Defendants.

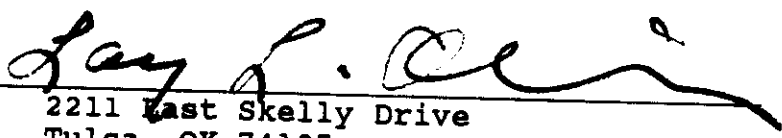
No. 89 C 096 C

JOINT STIPULATION OF DISMISSAL

COME NOW the Plaintiff, Roy Hannaford Company, Inc., and  
Lonnie Eck, trustee in bankruptcy for Roy J. Hannaford, an  
individual, and the Defendant, Aetna Life and Casualty, Inc., and  
hereby stipulation that Plaintiffs' action against Defendant  
Aetna Life and Casualty, Inc. be dismissed without prejudice.

LARRY L. OLIVER


By

  
2211 East Skelly Drive  
Tulsa, OK 74105

ATTORNEY FOR PLAINTIFFS

RHODES, HIERONYMUS, JONES, TUCKER & GABLE

By



JOHN H. TUCKER (OBA #9110)  
2800 Fourth National Bldg.  
Tulsa, Oklahoma 74119  
918-582-1173

ATTORNEYS FOR DEFENDANT, AETNA  
LIFE & CASUALTY CO.

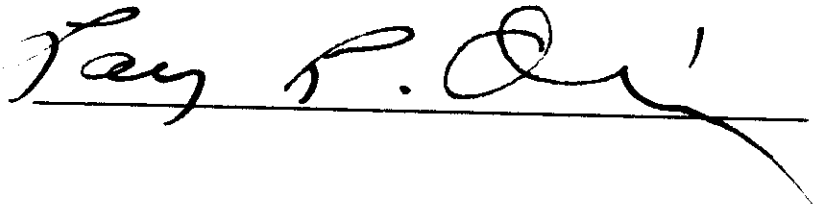
CERTIFICATE OF MAILING

I hereby certify that on this \_\_\_\_\_ day of February, 1989, I mailed a true and correct copy of the foregoing to the following counsel of record, with proper postage thereon fully prepaid:

C. Thomas Wesner, Jr., Esq.  
660 Three Lincoln Centre  
5430 LBJ Freeway LB#7  
Dallas, TX 75240

Phil Richards, Esq.  
Richards & Paul  
400 Nineteenth Street  
Tulsa, OK 74103

Joseph R. Farris, Esq.  
525 S. Main, Suite 1400  
Tulsa, OK 74103



IN THE UNITED STATES DISTRICT COURT IN AND FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

FEB 21 1980

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

VICTOR FEDERAL SAVINGS & LOAN  
ASSOCIATION,

Plaintiff,

vs.

McCORKLE DEVELOPMENT CORP.,  
et al.,

Defendant.

Case No. 88-C-1522-B

**STIPULATION OF PARTIAL DISMISSAL**

Plaintiff hereby dismisses with prejudice from the above-styled action the following described property situated in Tulsa County, State of Oklahoma, to wit:

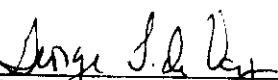
Lots Twenty-Two (22), Twenty-Four (24), Twenty-Five (25),  
Twenty-Six (26), Twenty-Seven (27) and Thirty-One (31), Block  
One (1), HEATHERRIDGE THIRD to the City of Tulsa, County  
of Tulsa, State of Oklahoma, according to the recorded plat  
thereof.

This action is continued however as to all other property covered thereby.

Respectfully submitted,

OWENS & MCGILL, INC.

By:

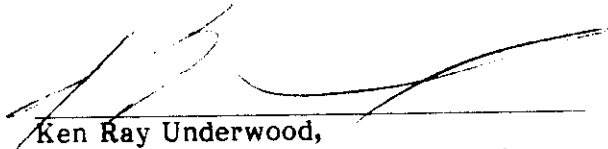
  
Ben K. McGill, #5989  
George L. de Verges #2324

1606 First National Bank Building  
Tulsa, Oklahoma 74103

HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON  
William D. Nay  
James M. Reed  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172

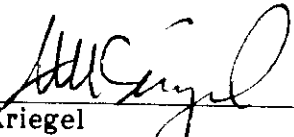
ATTORNEYS FOR FEDERAL SAVINGS &  
LOAN INSURANCE CORPORATION IN  
ITS CAPACITY AS RECEIVER FOR  
VICTOR SAVING & LOAN  
ASSOCIATION

APPROVED:

A handwritten signature in dark ink, appearing to read 'Ken Ray Underwood', is written over a horizontal line.

Ken Ray Underwood,  
Attorney for Defendants, McCorkle  
Development Corp.; Earl L. McCorkle  
and Virginia R. McCorkle

APPROVED:

---

M.W. Kriegel  
Attorney for Federal Deposit  
Insurance Corporation



APPROVED:

A handwritten signature in cursive script, appearing to read "Robert G. Brown", written over a horizontal line.

Robert G. Brown

Attorney for London Trust

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CIGNA PROPERTY & CASUALTY  
COMPANIES, a Pennsylvania  
corporation,

Plaintiff,

vs.

YOCAM BROTHERS CONSTRUCTION  
INC., an Oklahoma corporation,

Defendant/Third  
Party Plaintiff,

vs.

AMERICAN CASUALTY COMPANY  
OF READING, PENNSYLVANIA,

Third Party Defendant.


No. 88-C-224-B

FILED  
FEB 21 1989  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law herein entered this date, Yocham Brothers Construction Inc., is hereby granted judgment against American Casualty Company of Reading, Pennsylvania, in the amount of Twenty-Five Thousand Three Hundred One and 84/100 Dollars (\$25,301.84) plus postjudgment interest at the rate of 9.32% per annum from the date of judgment. Timely applications for attorney's fee by the prevailing party herein should be made pursuant to local rule.

DATED this 21<sup>st</sup> day of February, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

CARL E. FRAZIER,

Plaintiff,

v.

SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Defendant.

88-C-485-C

**F I L E D**

**FEB 17 1989**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER


The Court has for consideration the Report and Recommendation of the United States Magistrate filed January 30, 1989 in which the Magistrate recommended that Plaintiff's action be dismissed with prejudice as a sanction pursuant to Rule 16, Fed.R.Civ.P.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that the recommendations of the United States Magistrate are hereby adopted as set forth above; and that Plaintiff's action be and is, hereby dismissed, with prejudice.

Dated this 17 day of Feb., 1989.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

PETER BERNHARDT, OBA #741  
Assistant United States Attorney  
3600 United States Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONNIE L. JOHNSON; REBECCA D.  
JOHNSON; COUNTY TREASURER,  
Tulsa County, Oklahoma; and  
BOARD OF COUNTY COMMISSIONERS,  
Tulsa County, Oklahoma,

Defendants.

**F I L E D**

**FEB 17 1989**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-1622-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17 day  
of Feb, 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by Carl Robinson, Assistant District Attorney,  
Tulsa County, Oklahoma; and the Defendants, Ronnie L. Johnson and  
Rebecca D. Johnson, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendants, Ronnie L. Johnson and  
Rebecca D. Johnson, acknowledged receipt of Summons and Complaint  
on December 17, 1988; that Defendant, County Treasurer, Tulsa  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on December 20, 1988; and that Defendant, Board of County  
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of  
Summons and Complaint on December 19, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on January 6, 1989; and that the Defendants, Ronnie L. Johnson and Rebecca D. Johnson, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

The South 210 feet of the West Half (W/2) of a tract of land more particularly described as follows: Beginning at a point 848.52 feet South and 1179.01 feet West of the Northeast Corner of Section 4, Township 19 North, Range 12 East; thence West 119.5 feet; thence North 418.4 feet; thence East 119.5 feet; thence South 418.4 feet to the point of beginning, all in the South Half (S/2) of Lot One (1), Section Four (4), Township Nineteen (19) North, Range Twelve (12) East of the Indian Base and Meridian in Tulsa County, State of Oklahoma, according to the United States Government Survey thereof.

The Court further finds that on September 4, 1986, the Defendants, Ronnie L. Johnson and Rebecca D. Johnson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$32,400.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ronnie L. Johnson and Rebecca D. Johnson, executed and delivered to the

United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated September 4, 1986, covering the above-described property. Said mortgage was recorded on September 11, 1986, in Book 4969, Page 844, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Ronnie L. Johnson and Rebecca D. Johnson, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Ronnie L. Johnson and Rebecca D. Johnson, are indebted to the Plaintiff in the principal sum of \$32,687.59, plus interest at the rate of 9.5 percent per annum from November 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$209.00, plus penalties and interest, for the year of 1988. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Ronnie L. Johnson and Rebecca D. Johnson, in the principal sum of

\$32,687.59, plus interest at the rate of 9.5 percent per annum from November 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.32 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$209.00, plus penalties and interest, for ad valorem taxes for the year of 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Ronnie L. Johnson and Rebecca D. Johnson, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;



Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$209.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


*Edward H. Galt*  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney



PETER BERNHARDT, OBA #741  
Assistant United States Attorney

  
CARL ROBINSON, OBA #10164  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

Judgment of Foreclosure  
Civil Action No. 88-C-1622-C

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

**FEB 17 1989**

ALLEN LEE MESSIMORE,

Plaintiff,

vs.

KELLEY CARS, INC.,

Defendant.

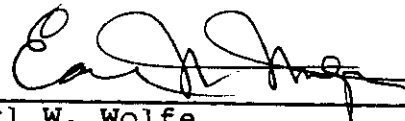
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 88-C-1386C

NOTICE OF DISMISSAL

Comes now the plaintiff, Allen Lee Messimore and pursuant to Rule 41 (a)(1) of the Federal Rules of Civil Procedure dismisses without prejudice his complaint. Said dismissal is filed without prejudice since defendant has not served an answer to his complaint.

Dated this 17th day of February, 1989.



Earl W. Wolfe  
Attorney for the Plaintiff  
The Hartford Building, Suite 123  
110 South Hartford  
Tulsa, Oklahoma 74120-1834  
(918) 582-3168

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GLEND A SUE VAUGHN and  
BETTY F. SPRADLIN,

Plaintiffs,

vs.

HENRY STEVE BAPTISTA,

Defendant.

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)  
)  
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)  
)

No. 88-C-1277 C

FILED

FEB 17 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

FOR GOOD CAUSE SHOWN, the above cause of action is dismissed  
with prejudice.

DATED this 17<sup>th</sup> day of Feb, 1989.

(Signed) H. Dale Cook

JUDGE

REF ID: A66042

JACK C. SMYTH, CLERK  
U.S. DISTRICT COURT

No. 88-C-793-C

## ORDER

Thus a petitioner is entitled to habeas relief in federal courts only when rights guaranteed him by the United States Constitution have been denied him. Sinclair v. Turner, 447 F.2d 1158, 1161 (10th Cir. 1971). Here, petitioner contends that his Constitutional due process rights were denied him because the State improperly

introduced evidence of his prior felony convictions in a State-provided preliminary hearing.

This Court does not agree that the due process, petitioner claims to have been denied him, is of federal origin. The preliminary hearing complained of by petitioner is purely a product of the Oklahoma Rules of Criminal Procedure<sup>1</sup>; and unless these criminal procedures violate some aspect of the federal Constitution<sup>2</sup>, they are not themselves subject to interpretation in a federal habeas corpus proceeding. United States v. Rundle, 328 F.Supp. 41 (E.D.Pa. 1971). See Brinlee v. Crisp, 608 F.2d 839 (10th Cir. 1979); Cox v. Hutto, 589 F.2d 394 (8th Cir. 1979) (State criminal proceedings are purely a matter of local concern and are not reviewable by a federal court under the Due Process clause.) Thus the petitioner is in error when he cites the Oklahoma Rules of Criminal Procedure and expects this Court to interpret them. Only the Oklahoma State courts have jurisdiction for that. See Rose v. Hodges, 423 U.S. 19, 96 S.Ct. 175, 46 L.Ed.2d 162 (1974) (Federal forum is not available to address claims arising solely under State law.) Reh.den. 423 U.S. 1092.

However, this Court does have jurisdiction and will now consider whether any of petitioner's Constitutional rights were denied him. The specific rights guaranteed by the United States Constitution relevant to criminal proceedings are: (1) respect for

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<sup>1</sup>The Supreme Court has long held that there is no federal Constitutional right to a preliminary hearing. Lem Woon v. State of Oregon, 229 U.S. 586, 33 S.Ct. 783, 57 L.Ed. 1340, 1342 (1913); Gerstein v. Pugh, 420 U.S. 103, 119, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975).

<sup>2</sup>A preliminary hearing, like all State action, must be consistent with the federal Constitution. See Buchalter v. New York, 319 U.S. 427, 63 S.Ct. 1129, 87 L.Ed. 1492, 1493 (1942)

individual rights to privacy and freedom from self-incrimination in the investigative process; (2) that the person not twice be placed in jeopardy for the same offense; (3) prompt processing of the charges; (4) that the trial of the charges be public; (5) that the charges be tried before an impartial jury; (6) fair notice of the charges and a chance to prepare a defense; (7) the right to confront and cross-examine witnesses; (8) compulsory process to obtain favorable witnesses and evidence; (9) the assistance of counsel; (10) that excessive bail not be used to keep the individual in custody prior to the termination of the prosecution; and (11) that the punishment not be excessive or cruel. J. Nowak, R. Rotunda, & J. Young, Constitutional Law 493 (3d. Ed 1986). After reviewing all of petitioner's proceedings and comparing them with his above Constitutional rights, this Court holds that none of petitioner's Constitutional rights were denied him.

The petitioner's writ of habeas corpus under 28 U.S.C. Section 2254 is DENIED. The Magistrate's Report and Recommendation is CONFIRMED on other grounds.

IT IS SO ORDERED this 17<sup>th</sup> day of February, 1989.

  
H. DALE COOK  
Chief Judge, U. S. District Court

FRANK GREER



IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

PHILIP HANCOCK,

Plaintiff,

vs.

FARMERS NEW WORLD LIFE INSURANCE  
COMPANY,

Defendant.

No. 88-C-525-C

FILED

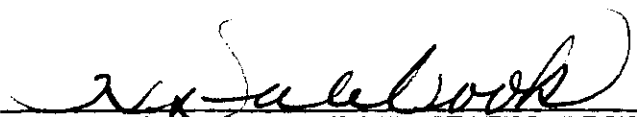
FEB 17 1989

ORDER OF DISMISSAL

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

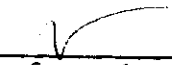
NOW on this 17 day of July, 1989, upon the written application of the Plaintiff, Philip Hancock, and the Defendant, Farmers New World Life Insurance Company, for a dismissal with prejudice of the Complaint of Hancock v. Farmers, and all causes of action therein, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of the Plaintiff, and that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff, Philip Hancock, against the Defendant, Farmers New World Life Insurance Company, be and the same hereby are dismissed with prejudice to any future action.

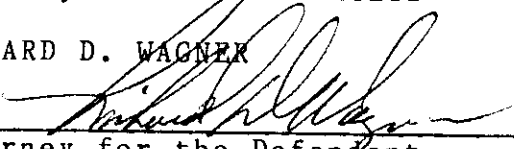
  
JUDGE OF THE UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

APPROVALS AS TO FORM:

WILLIAM L. HICKMAN

  
\_\_\_\_\_  
Attorney for the Plaintiff

RICHARD D. WAGNER

  
\_\_\_\_\_  
Attorney for the Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 17 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

MALCOLM BARNETT, Personal Representative )  
of the Estate of REGINA ANGINETTA )  
BARNETT, Deceased, and the Estate of )  
Baby ANDREW JORDEAMON BARNETT, )  
Individually and as Natural Parent )  
and Grandparent, )

Plaintiffs, )

v. )

Case No. 87-C-277-B

GERALD C. ZUMWALT, M.D., )  
ROBERT G. WHITE, M.D., SAPULPA )  
DOCTORS, INC., an Oklahoma Corporation, )  
BARTLETT MEDICAL CENTER, INC., an )  
Oklahoma Corporation, and CHARLES J. )  
GEBETSBERGER, M.D., )

Defendants. )

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON THIS 17<sup>th</sup> day of February, 1989, the above-styled and numbered cause of action comes on for jury trial pursuant to regular notice and setting, with the Plaintiff and the Defendants, Gerald C. Zumwalt, M.D., Robert G. White, M.D., Sapulpa Doctors, Inc., and Charles J. Gebetsberger, M.D., announcing through counsel that they have reached a settlement. Thereafter, the Court having inquired of counsel, finds that this case insofar as the Plaintiff's claims against the Defendant physicians and Sapulpa Doctors, Inc., has been fully settled, but that Plaintiff reserves all rights against the Defendant, Bartlett Medical Center, Inc.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the above-styled and numbered cause of action is dismissed with prejudice to the refiling of same, save and accept Plaintiff's claims and causes of action against the Defendant, Bartlett Medical Center, Inc., which are specifically reserved and remain at issue for trial.

IT IS FURTHER ORDERED, that Plaintiff and the settling Defendants shall each bear their own costs.

S/ THOMAS R. BRETT  

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United States District Judge

8-426/MPA/sam

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HAROLD WAYNE JONES; LONZETTA  
MARIE JONES; GENERAL CREDIT  
COMPANY n/k/a FIDELITY  
FINANCIAL SERVICES, INC.;  
FIDELITY BANK, N.A., as Trustee  
for the Oklahoma Housing  
Finance Agency, n/k/a BANK OF  
OKLAHOMA; COUNTY TREASURER,  
Tulsa County, Oklahoma; and  
BOARD OF COUNTY COMMISSIONERS,  
Tulsa County, Oklahoma,

Defendants.

FILED

FEB 17 1989

Jack C. Sells, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 88-C-447-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17<sup>th</sup> day  
of Feb., 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Tulsa County, Oklahoma, and  
Board of County Commissioners, Tulsa County, Oklahoma, appear by  
Doris L. Fransein, Assistant District Attorney, Tulsa County,  
Oklahoma; the Defendant, General Credit Company n/k/a Fidelity  
Financial Services, Inc., appears by its attorney Don E. Gasaway;  
and the Defendants, Harold Wayne Jones; Lonzetta Marie Jones; and  
Fidelity Bank, N.A., as Trustee for the Oklahoma Housing Finance  
Agency, n/k/a Bank of Oklahoma, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, Harold Wayne Jones and Lonzetta Marie Jones, were served with Summons and Complaint on August 8, 1988 and October 10, 1988; that the Defendant, General Credit Company n/k/a Fidelity Financial Services, Inc., acknowledged receipt of Summons and Complaint on May 23, 1988; that the Defendant, Fidelity Bank, N.A., as Trustee for the Oklahoma Housing Finance Agency, n/k/a Bank of Oklahoma, acknowledged receipt of Summons and Complaint on July 18, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 23, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 20, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on June 8, 1988; that the Defendant, General Credit Company n/k/a Fidelity Financial Services, Inc., filed its Answer and Cross-Complaint herein on June 17, 1988; and that the Defendants, Harold Wayne Jones; Lonzetta Marie Jones; and Fidelity Bank, N.A., as Trustee for the Oklahoma Housing Finance Agency, n/k/a Bank of Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real

property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirteen (13), Block Forty-eight (48),  
VALLEY VIEW ACRES THIRD ADDITION to the City  
of Tulsa, Tulsa County, Oklahoma, according  
to the recorded Plat thereof.

The Court further finds that on August 16, 1973, the Defendants, Harold Wayne Jones and Lonzetta Marie Jones, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$10,250.00, payable in monthly installments, with interest thereon at the rate of four and one-half percent (4.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Harold Wayne Jones and Lonzetta Marie Jones, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated August 16, 1973, covering the above-described property. Said mortgage was recorded on August 23, 1973, in Book 4084, Page 1905, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Harold Wayne Jones and Lonzetta Marie Jones, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Harold Wayne Jones and Lonzetta Marie Jones, are indebted to the Plaintiff in the principal sum of \$7,104.77, plus interest at the rate of 4.5 percent per annum from August 1, 1987 until judgment,

plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$4.00 which became a lien on the property as of 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

The Court further finds that the Defendant, General Credit Company n/k/a Fidelity Financial Services, Inc., has a lien on the property which is the subject matter of this action by virtue of a real estate mortgage dated November 19, 1982, and recorded on November 22, 1982, in Book 4651, Page 1658, in the office of the County Clerk of Tulsa County, Oklahoma, in the amount of \$10,709.85 with interest thereon at the rate of 21 percent per annum from May 27, 1988 until paid, an attorney's fee of \$1,606.48, and costs of this action. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Harold Wayne Jones and Lonzetta Marie Jones, in the principal sum of \$7,104.77, plus interest at the rate of 4.5 percent per annum from August 1, 1987 until judgment, plus interest thereafter at



the current legal rate of 9.32 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$4.00 for personal property taxes for the year 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, General Credit Company n/k/a Fidelity Financial Services, Inc., have and recover judgment in the amount of \$10,709.85 with interest thereon at the rate of 21 percent per annum from May 27, 1988 until paid, an attorney's fee of \$1,606.48, and costs of this action, by virtue of a real estate mortgage dated November 19, 1982, and recorded on November 22, 1982, in Book 4651, Page 1658, in the office of the County Clerk of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Fidelity Bank, N.A., as Trustee for the Oklahoma Housing Finance Agency, n/k/a Bank of Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Harold Wayne Jones and Lonsetta Marie Jones, to satisfy the money judgment of the Plaintiff

herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendant, General Credit Company n/k/a Fidelity Financial Services, Inc., amount of \$10,709.85 with interest thereon at the rate of 21 percent per annum from May 27, 1988 until paid, an attorney's fee of \$1,606.48, and costs of this action;

Fourth:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$4.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

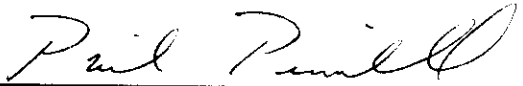
S/ THOMAS R. BRETT


---


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
\_\_\_\_\_  
PHIL PINNELL, OBA #7169  
Assistant United States Attorney

  
\_\_\_\_\_  
DON E. GASAWAY, OBA #3276  
Attorney for Defendant,  
General Credit Company n/k/a  
Fidelity Financial Services, Inc.

  
\_\_\_\_\_  
CARL ROBINSON, OBA #10164  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

PP/css

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 17 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

LARRY GAIL LINEBARGER

Plaintiff,

v.

H.D. ADAIR, Tulsa Police  
Department,

Defendant.

87-C-726-B

ORDER

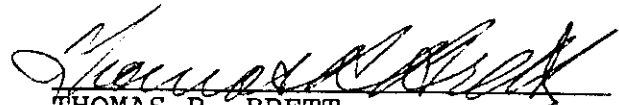
The Court has for consideration the Report and Recommendation of the United States Magistrate filed January 30, 1989 in which the Magistrate recommended that judgment by default be entered against Plaintiff in favor of Defendant pursuant to Rule 16, Fed.R.Civ.P. and Rule 15(A), Rules of the U.S. District Court for the Northern District of Oklahoma.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that the recommendations of the United States Magistrate are hereby adopted as set forth above; and that Plaintiff's action is dismissed with prejudice as to Defendant H.D. Adair.

Dated this 17 day of February, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES L. HERIFORD,

Defendant.

FEB 16 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-957-E

AGREED JUDGMENT

This matter comes on for consideration this 16th  
day of December, 1988, the Plaintiff appearing by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States  
Attorney, and the Defendant, James L. Heriford, appearing pro  
se.

The Court, being fully advised and having examined the  
file herein, finds that the Defendant, James L. Heriford,  
was served with Summons and Complaint on November 22, 1988. The  
Defendant has not filed an Answer but in lieu thereof has agreed  
that he is indebted to the Plaintiff in the amount alleged in  
the Complaint and that judgment may accordingly be entered  
against him in the principal amount of \$14,787.85, plus accrued  
interest of \$1,345.41 as of June 30, 1988, plus interest  
thereafter at the rate of four (4) percent per annum, until  
judgment, plus interest thereafter at the legal rate until paid,  
plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, James L. Heriford, in the principal amount of \$14,787.85, plus accrued interest of \$1,345.41 as of June 30, 1988, plus interest thereafter at the rate of four (4) percent per annum until judgment, plus interest thereafter at the current legal rate of \_\_\_\_\_ percent per annum until paid, plus the costs of this action.


WILLIAM F. BARNES

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM  
United States Attorney

  
PHIL PINNELL  
Assistant U.S. Attorney

  
JAMES L. HERIFORD

PEP/mp

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 16 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JOEL JENNINGS,

Plaintiff,

vs.

CITY OF TULSA and  
ROBERT LARRY KINNEY

Defendants.

No. 88-C-866-E

CONSENT DECREE

The plaintiffs, above named, filed amended complaint herein on September 28, 1988, alleging violations of his civil rights and seeking compensatory damages, punitive damages and attorney fees. The plaintiff, by and through his attorney of record, Everett R. Bennett Jr., and the defendants by and through their attorney David L. Pauling, have each consented to the entry of this consent decree without trial and without adjudication of any issue of fact or law arising herein. The court, having considered the matter and being duly advised, orders, adjudges and decrees as follows:

1. This court has jurisdiction over the subject matter of this action and the parties hereto. The amended complaint properly states claims for relief against the consenting defendant, City of Tulsa, Oklahoma, pursuant to 42 U.S.C. §1983.


2. The defendant City of Tulsa, Oklahoma, a municipal corporation, shall pay plaintiff the sum of \$4,000, said sum representing full, final and complete settlement upon all

sustained damages, all attorney fees incurred by plaintiff, and all court costs incurred by plaintiff as a result of this litigation and the events preceding its commencement.

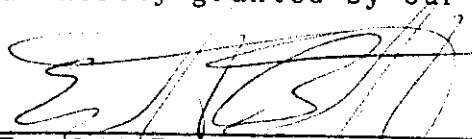
3. This consent decree shall not constitute an admission of liability or fault on the part of the consenting defendant, City of Tulsa, Oklahoma.

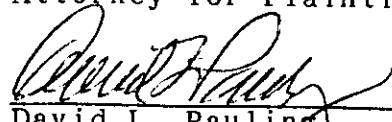
4. This consent decree shall include and cover all issues of fact and law raised by plaintiff or, otherwise, arising from or pertaining to the occurrence identified in plaintiff's amended complaint, and it shall act as a final judgment as to such issues and event and with regard to all damages sustained by plaintiff, including court costs and attorney fees.

Dated this 16<sup>th</sup> day of January, 1989.

  
James O. Ellison  
U.S. District Judge

We, the undersigned, hereby consent to the entry of the foregoing consent decree as a final judgment herein and state to the court that we are acting with full authority granted by our respective clients.

  
Everett R. Bennett Jr.  
Attorney for Plaintiff

  
David L. Pauling  
Attorney for defendant  
City of Tulsa, Oklahoma



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH A. WOLFE; NANCY B. WOLFE;  
FOURTH NATIONAL BANK OF TULSA;  
COUNTY TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants.

**F I L E D**

FEB 16 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-522-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 16 day  
of February, 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by Carl Robinson, Assistant District Attorney,  
Tulsa County, Oklahoma; the Defendant, Fourth National Bank of  
Tulsa, appears not, having previously filed its Disclaimer; and  
the Defendants, Joseph A. Wolfe and Nancy B. Wolfe, appear not,  
but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendants, Joseph A. Wolfe and  
Nancy B. Wolfe, were served with Summons and Complaint on  
October 18, 1988; that the Defendant, Fourth National Bank of  
Tulsa, acknowledged receipt of Summons and Complaint on June 20,

1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 21, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 10, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on June 29, 1988; that the Defendant, Fourth National Bank of Tulsa, filed its Disclaimer herein on December 23, 1988; and that the Defendants, Joseph A. Wolfe and Nancy B. Wolfe, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Three (3), Block Five (5), LEISURE PARK II, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on August 26, 1982, the Defendants, Joseph A. Wolfe and Nancy B. Wolfe, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$58,000.00, payable in monthly installments, with interest thereon at the rate of 14 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Joseph A. Wolfe and Nancy B. Wolfe, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated August 26, 1982, covering the above-described property. Said mortgage was recorded on September 3, 1982, in Book 4636, Page 365, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Joseph A. Wolfe and Nancy B. Wolfe, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Joseph A. Wolfe and Nancy B. Wolfe, are indebted to the Plaintiff in the principal sum of \$57,110.42, plus interest at the rate of 14 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

The Court further finds that the Defendant, Fourth National Bank of Tulsa, disclaims any right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants,

Joseph A. Wolfe and Nancy B. Wolfe, in the principal sum of \$57,110.42, plus interest at the rate of 14 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.32 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Fourth National Bank of Tulsa, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Joseph A. Wolfe and Nancy B. Wolfe, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

*W. DAVID G. ROBINSON*

UNITED STATES DISTRICT JUDGE

APPROVED:

*[Signature]*  
TONY M. GRAHAM  
United States Attorney

*[Signature]*  
PETER BERNHARDT, OBA #741  
Assistant United States Attorney

*[Signature]*  
CARL ROBINSON, OBA #10164  
Assisant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 16 1989

FEDERAL DEPOSIT INSURANCE CORPORATION,  
in its corporate capacity,

Plaintiff,

vs.

WARREN W. THOMAS and DALE E. MITCHELL,  
Co-Trustees; WARREN W. THOMAS; CLETA  
DEATHERAGE MITCHELL; THE FIRST SOUTHERN  
BAPTIST CHURCH OF DEL CITY; and UNION  
BANK AND TRUST CO.,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 87-C-920-E

ORDER

This matter comes on before the Court on this 15<sup>th</sup> day  
of February, 1989, upon application of the Plaintiff herein  
for an Order administratively closing the case.

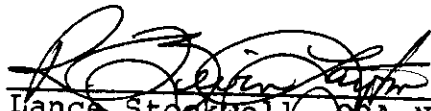
Having reviewed the Application filed herein by Plaintiff  
Federal Deposit Insurance Corporation, the Court finds that good  
cause exists for such administrative closure, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case  
be and hereby is administratively closed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this case  
may be reopened by any party on or before February 10, 1990, and  
that if no party has moved the Court to reopen this case, it  
shall be deemed dismissed without prejudice at that time.

  
United States District Judge

Approved as to Form:



Lance Stockwell, OBA No. 8650  
R. Kevin Layton, OBA No. 11900  
of BOESCHE, McDERMOTT & ESKRIDGE  
100 West Fifth Street  
Tulsa, Oklahoma 74103  
(918) 583-1777

ATTORNEYS FOR FEDERAL DEPOSIT  
INSURANCE CORPORATION

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 16 1989

GENERAL ELECTRIC COMPANY,  
a New York Corporation,

Plaintiff,

vs.

GRAND RIVER DAM AUTHORITY, an  
Oklahoma Public Corporation; and  
THE BENHAM GROUP, INC., a  
Delaware Corporation,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

N. 85-C-333-E

ORDER OF DISMISSAL WITH PREJUDICE OF COUNTERCLAIM  
OF DEFENDANT AND COUNTERCLAIMANT THE BENHAM GROUP, INC.

Pursuant to the Notice of Dismissal and Application for Order of Dismissal With Prejudice, and for good cause shown, it is hereby ordered that the Counterclaim of the Defendant and Counterclaimant, The Benham Group, Inc., is dismissed with prejudice, each party to bear its own attorney's fees, costs and expenses incurred herein.

Dated this 16 day of February, 1989.

United States District Judge



FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 16 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

GENERAL ELECTRIC COMPANY, a )  
New York corporation, )

Plaintiff, )

vs. )

NO. 85-C-333-E

GRAND RIVER DAM AUTHORITY, an )  
Oklahoma public corporation; and, )  
THE BENHAM GROUP, INC., a Delaware )  
corporation, )

Defendants. )

**ORDER OF DISMISSAL WITH PREJUDICE OF COUNTERCLAIM  
OF DEFENDANT AND COUNTERCLAIMANT GRAND RIVER DAM AUTHORITY**

Pursuant to the Notice of Dismissal and Application for Order of Dismissal With Prejudice, and for good cause shown, it is hereby ordered that the Counterclaim of the Defendant and Counterclaimant, Grand River Dam Authority, is dismissed with prejudice, each party to bear its own attorney's fees, costs and expenses incurred herein.

Dated this 16 day of February, 1989.

**S/ JAMES O. ELSON**

UNITED STATES DISTRICT JUDGE

FILED

FEB 16 1989

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

GENERAL ELECTRIC COMPANY,  
a New York Corporation,

Plaintiff,

vs.

GRAND RIVER DAM AUTHORITY, an  
Oklahoma Public Corporation; and  
THE BENHAM GROUP, INC., a  
Delaware Corporation,

Defendants.

N. 85-C-333-E

ORDER OF DISMISSAL WITH PREJUDICE OF CROSS-CLAIM  
OF DEFENDANT AND CROSS-CLAIMANT, THE BENHAM GROUP, INC.

Pursuant to the Notice of Dismissal and Application for Order of Dismissal With Prejudice, and for good cause shown, it is ordered that the Cross-Claim of the Defendant and Cross-claimant, The Benham Group, Inc., is dismissed with prejudice, each party to bear its own attorney's fees, costs and expenses incurred herein.

Dated this 16 day of February, 1989.

S/ JAMES O. ELSON

United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 16 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

GENERAL ELECTRIC COMPANY,  
a New York corporation,

Plaintiff,

vs.

No. 85-C-333-E

GRAND RIVER DAM AUTHORITY, an  
Oklahoma Public Corporation; and  
THE BENHAM GROUP, INC., a  
Delaware corporation,

Defendants.

**ORDER OF DISMISSAL WITH PREJUDICE OF COMPLAINT  
OF PLAINTIFF AND COUNTERDEFENDANT, GENERAL ELECTRIC COMPANY**

Pursuant to the Notice of Dismissal and Application for Order of Dismissal With Prejudice, and for good cause shown, it is hereby ordered that the Complaint, and each and every claim for relief thereof, of the Plaintiff and Counterdefendant General Electric Company, as to Defendant and Counterclaimant, Grand River Dam Authority, is dismissed with prejudice, each party to bear its own attorney's fees, costs and expenses incurred herein.

DATED this 16 day of February, 1989.

S/ JAMES O. ELLISON

United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

FEB 16 1989

GENERAL ELECTRIC COMPANY, a )  
New York corporation, )

Plaintiff, )

vs. )

NO. 85-C-333-E

GRAND RIVER DAM AUTHORITY, an )  
Oklahoma public corporation; and, )  
THE BENHAM GROUP, INC., a Delaware )  
corporation, )

Defendants. )

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

**ORDER OF DISMISSAL WITH PREJUDICE OF CROSS-CLAIM  
OF DEFENDANT AND CROSS-CLAIMANT GRAND RIVER DAM AUTHORITY**

Pursuant to the Notice of Dismissal and Application for Order of Dismissal With Prejudice, and for good cause shown, it is hereby ordered that the Cross-Claim of the Defendant and Cross-Claimant, Grand River Dam Authority, is dismissed with prejudice, each party to bear its own attorney's fees, costs and expenses incurred herein.

Dated this 16 day of February, 1989.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

FEB 16 1989

GENERAL ELECTRIC COMPANY,  
a New York corporation,

Plaintiff,

vs.

GRAND RIVER DAM AUTHORITY, an  
Oklahoma Public Corporation; and  
THE BENHAM GROUP, INC., a  
Delaware corporation,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 85-C-333-E

**ORDER OF DISMISSAL WITH PREJUDICE OF COMPLAINT  
OF PLAINTIFF AND COUNTERDEFENDANT, GENERAL ELECTRIC COMPANY**

Pursuant to the Notice of Dismissal and Application for Order of Dismissal With Prejudice, and for good cause shown, it is hereby ordered that the Complaint, and each and every claim for relief thereof, of the Plaintiff and Counterdefendant General Electric Company, as to Defendant and Counterclaimant, The Benham Group, Inc., is dismissed with prejudice, each party to bear its own attorney's fees, costs and expenses incurred herein.

DATED this 16 day of February, 1989.

**S/ JAMES G. ELISON**

United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 16 1989

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its corporate  
capacity,

Plaintiff,

vs.

JAMES W. VICKERS,

Defendant.

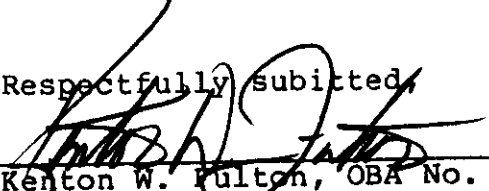
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 88-C-897-B

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff Federal Deposit Insurance Corporation, in its corporate capacity, by and through its attorney of record, Kenton W. Fulton of Boesche, McDermott & Eskridge, and hereby dismisses with prejudice its cause of action in the above styled case.

Respectfully submitted,

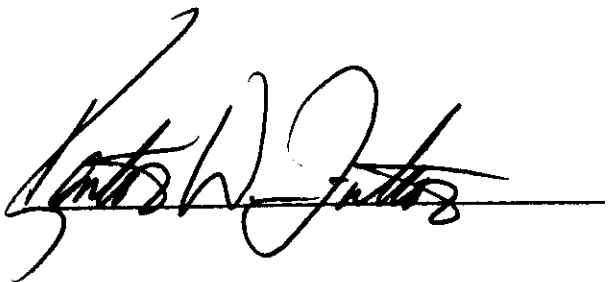
  
Kenton W. Fulton, OBA No. 11308  
BOESCHE, McDERMOTT & ESKRIDGE  
800 ONEOK Plaza  
100 West Fifth Street  
Tulsa, OK 74103  
(918) 583-1777

ATTORNEYS FOR PLAINTIFF  
FEDERAL DEPOSIT INSURANCE  
CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 1989, the above and foregoing Dismissal with Prejudice was placed in the United States mail, postage pre-paid, to the following:

Michael Barkley, Esq.  
John Clayman, Esq.  
Barkley, Rodolf, Silva,  
McCarthy & Rodolf  
410 ONEOK Plaza  
100 West Fifth Street  
Tulsa, OK 74103



*Handwritten:* FEB 15 1989  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

88-C-607-B

<sup>1</sup> In a companion case, Case No. 88-C-437-B, Scott attacks a conviction in Tulsa County District Court Case No. CRF-80-3246.

In his third ground for relief, he asserts that the Oklahoma Courts should have applied the standard set forth in Ake v. Oklahoma, 105 S.Ct. 1087, 1092 (1985), in determining whether Petitioner waived his right to a unanimous verdict. Answer to United States District Court's Interrogatory Order, p. 12 at ¶3.

In order to satisfy the exhaustion requirement, a Petitioner is ordinarily required to show that a state appellate court has had an opportunity to rule on the same claim presented in federal court. White v. Meachum, 838 F.2d 1137, 1138 (10th Cir. 1988). The mere raising of a state law claim "does not satisfy the exhaustion requirement where state appellate courts have not had fair opportunity to address constitutional ramifications subsequently raised in federal court". Qureshi v. Diesslin, 654 F.Supp. 555, 557 (D. Colo. 1987). "An argument based on state law is not the equivalent of a claim of a specific constitutional violation." Id.

Petitioner herein has failed to raise his second and third grounds for relief before the Oklahoma state courts. When Scott presented his argument on the right to a unanimous verdict, (the second ground herein) it was postured as a right based in Oklahoma's constitution (Art. 2, §19), and the state appellate court decided the issue upon state law. Similarly, the claim Scott now urges as ground three was not presented to the Oklahoma courts couched in constitutional terms. Rather, the Oklahoma Court of Criminal Appeals basing its decision on Jetton v. State, 632 P.2d 432 (Okla. Crim. App. 1981), held that Scott had waived




his right to object to errors in Count Two of the information in CRF-80-3311. Now Scott argues that his waiver was constitutionally ineffective.

Because the state appellate court has not had the opportunity to address the merits of Petitioner's federal constitutional arguments, the exhaustion requirement of 28 U.S.C. §2254<sup>2</sup> has not been satisfied for his second and third grounds. White v. Meachum, 838 F.2d at 1138. The result is a "mixed petition" which this Court cannot entertain.<sup>3</sup>

Accordingly, Scott's Petition is hereby dismissed. Petitioner may resubmit his habeas petition after deleting the unexhausted claims in grounds two and three within thirty (30) days, or file a new application after his second and third grounds have been fully and fairly presented in the state court system.

So ORDERED this 15<sup>th</sup> day of Feb., 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Rose v. Lundy, 102 S.Ct. 1198, 1204 (1982)("[O]ur interpretation of §§2254(b)-(C) provides a simple and clear instruction to potential litigants: before you bring any claims to federal court, be sure that you first have taken each one to state court").

<sup>3</sup> Rose v. Lundy, 102 S.Ct. at 1205 ("[W]e hold that a district court must dismiss habeas petitions containing both unexhausted and exhausted claims").

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**FEB 15 1989**

GEOFFREY H. SAFT,  
PLAINTIFF,

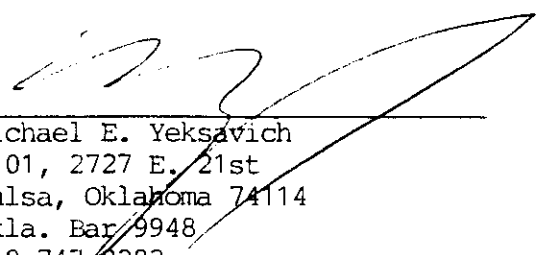
VS.


BENEFIT TRUST LIFE INSURANCE  
COMPANY, An Insurance Company,  
DEFENDANT.

Jack C. Silver, Clerk  
CASE NO. 88-C-651-U.S. DISTRICT COURT

STIPULATION OF DISMISSAL

Comes now the parties hereto and pursuant to agreement between them  
and dismiss the above styled and numbered case with prejudice.

  
\_\_\_\_\_  
Michael E. Yeksavich  
#101, 2727 E. 21st  
Tulsa, Oklahoma 74114  
Okla. Bar #9948  
918-747-8282  
Attorney for Plaintiff

  
\_\_\_\_\_  
N. Kay Bridger-Riley  
5051 S. Lewis, 2nd Floor  
Tulsa, Oklahoma 74105  
Okla. Bar 1121  
918-742-2383  
Attorney for Defendant